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# COURTS AND LAWYERS

—OF—

## NEW YORK

### A HISTORY

1609—1925

— BY —

ALDEN CHESTER

*Justice of the Supreme Court of New York, 1895-1918*

In Collaboration with

E. MELVIN WILLIAMS

*Historian*

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VOLUME I

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THE AMERICAN HISTORICAL SOCIETY, Inc.

NEW YORK and CHICAGO

1925

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## PREFACE

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IT IS THE habit of authors to write their concluding chapter as a preface to their labors. That duty remains to be performed.

Napoleon once said that "History is only a collection of lies that have been agreed to." That statement may have been appropriate to some of the history upon which much of his great renown rests, but with respect to the subject matter of these volumes it can have no application. The effort here has been to get at the truth and such time as could be spared from a somewhat active and busy life, has been devoted for several years in an endeavor to accomplish that purpose.

It was Lord Chesterfield, I believe, who wrote in one of his letters to his son that "History is only a confused heap of facts." No less a person than Carlyle took another view and said in one of his essays that "History is the essence of innumerable biographies." The facts upon which these volumes are based and which cover a period dating back to the earliest settlements of the country were not readily available and it took much of research to bring them into a chronological narrative. It is hoped that much of the confusion with respect to the "heap of facts" which disturbed Lord Chesterfield has been eliminated by following the suggestion made by Carlyle, for the development of the narration attempted has been found to a considerable extent in the biographies of the men whose names have been mentioned and whose lives have been briefly referred to. If it were not for them these volumes would be neither desirable nor possible.

The participation of lawyers in the public life of the country and their contribution to its development are known by all well informed people. This was true to a large extent during our provincial and colonial history and to a much greater extent in

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the Revolutionary period. The fervid eloquence of Adams and Otis, of Patrick Henry and many other of the eminent lawyers of that day created in the minds of the colonists the spirit which ultimately led to our independence. The Constitutional Convention of 1787 was dominated by lawyers and the language of the Constitution itself was largely that of a few of the members of that body who had been trained to the law. So too the first constitution of New York was prepared in great part by John Jay with the aid of other lawyers in the convention which adopted it. Of the thirty presidents of the United States twenty-one of them have been lawyers, and in comparatively recent years four eminent New York lawyers, three Democrats and one Republican, have been unsuccessful nominees of their respective parties for the presidency, *viz.*: Samuel J. Tilden, Alton B. Parker, Charles E. Hughes, and John W. Davis, which clearly shows the type of men the people are willing to put up as their leaders. The Congress and the legislatures of the various states, including our own, have had during our entire history a very considerable proportion of lawyers in their membership.

Notwithstanding all this, and probably because of it, the Bench and Bar have been the subject of severe criticism from time immemorial. Literary critics have always abounded and have appeared to get much satisfaction from their caustic comments.

It is reported that Horace Greeley, so long the trenchant editor of the New York "Tribune," said in connection with the political excitement following the decision of the Supreme Court in the Dred Scott case that the opinions of the prevailing Justices there were entitled to no more respect than the utterances of a lot of loafers in a Washington barroom.

A prominent newspaper, not many years ago in a leading editorial, predicted that the age of the law and the lawyers was passing away and that its knell had been struck. The argument was that in an early stage of social development the profession of arms embodied the principal intellectual and moral forces in the



world; that the teachers of theology were the leaders of the people and the chief agents in the work of advancing civilization. It admitted, however, that after the warriors and the theologians, the lawyers and judges had interpreted, developed and reformed codes of rights and remedies which the interests of society and the necessities of government demanded. But it stated that in later years their influence and power were on the wane and falling into relative decay.

Even Lord Bryce in the "American Commonwealth" (edition of 1908) marked "a decline in the tone and standing of the Bar." In a later work however ("The Modern Democracies"), he said that "legal education is probably nowhere so thorough as in the United States."

In this connection I want to quote from an address delivered in 1924 by R. B. West, Esq., as President of the Wyoming State Bar Association, on "The Social Value of the Lawyer." He said among other things:

True it is, that at different times, the profession has been severely criticized. It has been said among other things, that its members are parasites of society, living upon values but creating none. Francis M. Burdick has given the answer to this so plain and so clear that it seems that little can be left upon which this criticism may rest. He says: "Is this the correct view? If it were, we ought to find those nations the happiest, the most peaceful and orderly, the richest and most progressive, in which the legal parasites are the fewest. But the actual state of things is just the opposite of this. China has no lawyers. In Russia the proportion of population of lawyers is one to thirty-one thousand. In Germany, one to eighty-seven hundred; in France, one to forty-one hundred; in England, one to eleven hundred; in the United States, one to seven hundred. These statistics would tend to show that the legal profession is a blessing rather than an evil; that its members are not parasites of society, but on the other hand, if not direct creators of value, they are the protection of those engaged in production." These words were uttered more than ten years ago and it is still of some interest to note how true Professor Burdick spoke. . . . England alone of the European nations stands four-square to every wind that blows . . . . while the United States with its excessive number of so-called parasites, rides the majestic seas of time serenely, her colors



flying, the eyes of the world upon her, the hope of the liberties and freedom of mankind throughout the world. With this object lesson before us, surely we can agree with Mr. Burdick when he said: "I am sure that you will agree with me that if the lawyer is a pest, he is a liberty-loving, freedom-promoting, property-guarding pest."

The statues of few lawyers or judges will occupy niches in the Hall of Fame. Their work is largely of the present, and is recorded, if at all, only in the dry and musty reports of the courts which the general reader rarely sees. It seemed to the publishers, therefore, that a work of the character of this one was needed. The endeavor has been to produce a history of greater scope and breadth of treatment than has heretofore been attempted.

While the subject matter of the work appeals more directly to the lawyer and the jurist, it is hoped that it may not be without interest and value to the students of history who are engaged in other walks of life. Such as it is it is submitted to the candid criticisms of its readers.

The writer could not have entered upon this work without having the knowledge in advance that he was to have the valuable assistance of Mr. E. Melvin Williams, of the publisher's editorial staff, who has spent many years in historical research and writing. He has devoted many months in the New York State Library in culling from its vast treasures materials for use in this work. To him too much credit cannot be given for the aid he has rendered in making the work what it is. It is not only a pleasure but it is fitting that recognition be made here of his literary attainments, his diligence in research and his discriminating judgment in analysis. I also desire as does Mr. Williams to acknowledge the obligations we owe to Dr. James I. Wyer, the efficient director of the State Library; to John T. Fitzpatrick, Esq., and Miss Frances D. Lyon, of the State Law Library, and to Mr. William E. Hannon, Miss Ruth L. Montgomery, and Miss Ruth G. McClelland, of the Legislative Reference Library, for the many facilities they have freely afforded for research in the library, and for the many courtesies they have all so willingly extended to us. Acknowledg-



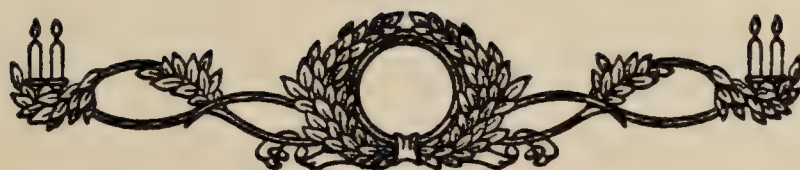
ment is also made to the several jurists and lawyers upon the Advisory Board of this history for many highly appreciated suggestions.

Perhaps I should add that in the preparation of the work, especially that portion relating to the provincial and colonial periods, much matter has been given that does not relate directly to the courts and lawyers of those periods, but which it seemed important to include in order more fully to elucidate the principal scope of the subject.

To each chapter is prefixed the names of most of the authorities which have been consulted in preparation for the writing of such chapters, and therefore no further credit is deemed essential.

ALDEN CHESTER.

Albany, N. Y., 1925.









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PART ONE

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THE DUTCH PERIOD







## CHAPTER I.

### THE BASES OF AMERICAN LAW.\*

The Common Law of England is the substratum of American jurisprudence. This is generally admitted. Indeed, the statement can hardly be disputed, for the fundamental laws of England held the basic protection demanded by the American colonists and provincials themselves, privileges claimed as their birthright by them in the Declaration of Rights and framed in the American Declaration of Independence. But while the American legal system owes much to the English, it is not unknown on both sides of the Atlantic that, in some respects, English Law has profited by American. This is not surprising; we build by experience, and profit by the experience of others. A little research in historical jurisprudence uncovers the fact that both English and American legal codes have drawn, with advantage, from other codes. Instances are seen in the constitutions of the states of New York and New Jersey, both of which states reflect, to some extent, the influence of their early Dutch communities upon their societies and institutions. Further research convinces the student that the fabric of Roman law had place in the Dutch legal system of mediæval and later times; indeed, he sees clearly that Roman influence permeated the polities of almost all

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\*AUTHORITIES—Guizot's "History of Civilization in Europe"; Green's "Short History of the English People"; Macaulay's "History of England"; Usher's "Rise of the American People"; Hawthorne's "History of the United States"; Hunt's "Madison's Notes"; Wessenaer's "Historia van Europa"; Mommsen's "History of Rome"; Lecky's "History of European Morals"; Motley's "Rise of the Dutch Republic"; Hallam's "History of the Middle Ages"; Dougherty's "Constitutional History of New York State"; Chester's "Legal and Judicial History of New York"; Eastman's "Courts and Lawyers of Pennsylvania"; Werner's "Civil List and Constitutional History of the Colony and State of New York"; "Encyclopedia Britannica"; Maine's "Early History of Institutions"; and a pamphlet published in Philadelphia, by William Bradford, in 1687, entitled; "The Excellent Privilege of Liberty & Property being the Birth-right of the Free-born Subjects of England."



western nations, that of England least of all perhaps.<sup>1</sup> No human experience is forever lost. The German tribes of the period of the Roman Empire maintained their independence of thought and custom; yet we find that the great German princes who ruled the greater part of Europe for some centuries after the fifth were Christianized and Romanized; and, as we have recently seen, the spirit of the Roman Empire lived again in the militaristic policy of the Teutons, fifteen centuries after the supremacy had passed from the Latins and Rome had been sacked by the Vandals. No nation is entirely original in its polity, not even the English, although Guizot found among the Anglo-Saxons "the most perfect type of barbaric royalty." When the royalty became Christian the Roman influence crept in, but in the early centuries the Teutonic tribes north of the Rhine successfully resisted the Latin trend, while other tribes of the Aryan race—the Celts in Britain, for example—adopted Roman customs and language, though not commonly. And even after the Christian religion, under Roman missionaries, had displaced the religion of Woden and Thor in Britain—which island the Engles and Saxons, during a century of conquest, had made the land of the English—the Latin speech "could not stand its ground against the Anglo-Saxon."<sup>2</sup> Instances of the etymological

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1. "The old English government (before the Reformation) was one of a class of limited monarchies which sprang up in Western Europe during the middle ages, and which, notwithstanding many diversities, bore to one another a strong family likeness. That there should have been such a likeness is not strange. The countries in which these monarchies arose had been provinces of the same great civilized empire, and had been overrun and conquered about the same time, by tribes of the same rude and warlike nation. They were members of the same great coalition against Islam. . . . Their polity naturally took the same form. They had institutions derived partly from imperial Rome, partly from papal Rome, partly from the old Germany."—Macaulay's "History of England, Vol. I, 22.

2. Nothing in the early existence of Britain indicated the greatness which she was destined to attain. . . . She was subjugated by Roman arms; but she received only a faint tincture of Roman arts and letters. . . . No writer of British birth is reckoned among the masters of Latin poetry and eloquence. . . . In our island the Latin appears never to have superceded the old Gallic speech, and could not stand its ground against the Anglo-Saxon. *Ibid.*, Vol. I, 2.



independence of the Anglo-Saxon are in the days of the week, derived from the gods of the barbarians.<sup>3</sup> And, as the English are looked upon as "the one purely German nation that rose from the wreck of Rome," one might, in looking for bases, lose sight of the subsequent merging of British and English and the Romanizing of both to some extent in mediæval times by the Popes, and expect to find that English law is an original structure, a polity built of fixed principles which permit of no deviation and accept no innovations. The contrary is what one does find however. Certain vital principles, it must be admitted, have been immovable. But in the application of these fundamentals sensible flexibility has been gained by legal interpretations which meet the case and the time.<sup>4</sup> Especially noticeable for its flexibility has been the Common Law of England as adapted to American needs.<sup>5</sup> Pinckney at the memorable convention which drafted the United States Constitution in 1787, said: "A system must be suited to the habits and genius of the People it is to govern, and must grow out of them." Such probably has been the trend of thought of publicists since the beginning of political history. A close study of fundamental law, however, fails to determine in what ancient period the principles which have been the main pillars

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3. Wednesday is Woden's-day, as Thursday is the day of Thunder (Thor), the god of air and storm and rain. Friday is Frea's-day, the deity of peace and joy and fruitfulness. Saturday commemorates an obscure god Saetere; Tuesday the dark god, Tiw, to meet whom was death.—Green's "Short History of the English People," Book I, Chap. 1.

4. Macaulay shows that while the English polity has adhered to certain fundamental principles, "so ancient that none can say when they began to exist," it has been expanded, and flexibly applied, to meet the needs of the nation's growth. He writes: "The present constitution of our country is, to the constitution under which she flourished five hundred years ago, what the tree is to the sapling, what the man is to the boy. The alteration has been great. Yet there never was a moment at which the chief part of what existed was not old."—Macaulay's "History of England," Vol. I, 20.

5. "It is one of the noblest properties of this common law (of England, as adopted in America) that, instead of moulding the habits, the manners, and the transactions of mankind to inflexible rules, it adapts itself to the business and circumstances of the times, and keeps pace with the improvements of the age."—C. J. Gibson, in *Lyle v. Richards*, 9 S. & R., 351; quoted in Eastman's "Courts and Lawyers of Pennsylvania," Vol. I, 157.



of the jurisprudence of Western civilization were first placed in the polity of a sovereignty.<sup>6</sup>

The student might take up the study of Magna Charta of 1215 A. D. What would he find? That that great code had as its base the Charter of Henry the First, with additions which, for the most part, were but formal recognitions of the judicial and constitutional changes introduced by Henry the Second. If he would go farther back in English history—to the sixth century—he would find the sons of Hengest and Aelle settling down in their new land in little pastoral village-commonwealths of kinsfolk, tilling the soil, observing the blood-bond in judging by witness of the kinsfolk, making laws in the assembly of the freemen, and choosing their own leaders much as their forefathers had in former centuries beside the Weser and the Elbe, thus manifesting traits akin to those of their Aryan ancestors of the time of the northwestern migration from Central Asia, and not unlike those of the Aryan tribes of the southeastern migration—the Indians and Persians who, in their village communities of even modern times, have shown similar habits of life. All of which leads to the thought that, in principle, free institutions such as we in America enjoy may

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6. The Roman Republic of course was essentially based upon the people; and the imperial royalty which began the Roman Empire and struggled for fifteen centuries against the ruin of the Roman world, was based on the recognition, at least by the early emperors, for instance Augustus and Tiberius, that the emperor "is the representative of the senate, the comitia, and the whole republic." The emperors named felt themselves in the presence of the late sovereign people, and "addressed them as their representatives and ministers."

In the great German invasion of the fifth century, the power was with the people. Barbarian royalty was essentially elective, though in some tribes the candidates for election were drawn only from the families of gods and demi-gods. In the religious royalty which gradually gained power in the seventh and eighth centuries we find principles not unlike those of the familiar Magna Charta of five centuries later. Quoting from the canons of the Council of Toledo, the status of king, in his relation to the people, in the seventh century, was as follows:

"The king is called king (rex) because he governs justly (rectè). If he acts with justice (rectè) he legitimately possesses the name of king; if he acts with injustice he miserably loses it. Our fathers, therefore, said with good reason: *Rex ejus, eris si recta facis, si autem non facis, non*



perhaps be traceable back to our Aryan ancestors of ancient days, before the migration from Central Asia—the cradle of mankind, some think.

Another point seems clear, *viz.*: That the determining factor in the science of law is evolution—the evolution of custom. Established custom grows out of the basic habits of mankind, which are instinctive—second nature, as it were. So custom is inherited, passed on from one generation to the next, from one people to another, from one civilization to another, changing with the passage, in degree or intensity, but remaining fundamentally the same; for the simple reason that human nature does not basically change, the primitive being always the basic elements that govern man's instincts, even though the modern may control his action. Law follows custom. Law seems to be, indeed, but the reflection of custom. Laws may be changed to suit the selfish interests of scheming powerful minorities, but the customs followed by the common people eventually, inevitably, shape the legal pattern. The habits of the few cannot govern the acts of the many; at least, not for long. The grooves into which the laws, to live long, must fit are those made by the weight of mankind, by the

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*eris.* The two principal royal virtues are justice and truth (science of the reason).

“The royal power is bound, like the people, to respect the laws. . . . Obedience to the will of Heaven, gives to us and to our subjects wise laws which our greatness and that of our successors is bound to obey, as well as the whole population of our kingdom. . . .

“God, the creator of all things, in disposing the structure of the human body, has raised the head on high, and has willed that the nerves of all the members should proceed therefrom. And he has placed in the head the torch of the eyes, to the end that from thence may be viewed all things that might be prejudicial. He has established the power of intellect, charging it to govern all the members and wisely to regulate their action. . . . It is first necessary, then, to regulate what relates to princes, to watch over their safety, and to protect their life, and then to order what relates to the people; so that in guaranteeing, as is fitting, the safety of kings, they at the same time guarantee, and more effectually, that of the people.”—*Forum Judicum*, I Lib., 2; Tit., I, 1, 2; 1, 4; quoted in Guizot's “Civilization in Europe,” eighth lecture.

Alaric, Theodoric, Clovis, Alboin, the chiefs who founded Teutonic dynasties in the continental provinces of the Roman Empire in the fifth



habits of the majority. To the extent that a government, in its legislative acts, meets custom depends its length of life; the functioning of past governments is the legislator's most reliable handbook. Nations are built upon the experience of other nations, just as invention is built upon invention, or philosophy upon life. There is nothing new under the sun. And, as man in the beginning was free, it would seem that the oldest of old institutions would be those that assure to man his right to freedom. Legal processes, some degree of constitutional restraint over personal acts, is necessary for the protection of man in his freedom of body and estate. This, through the ages, has been commonly recognized, most men being logical enough to know that freedom without a common curb would lead to insecurity that would cancel freedom—to lawlessness that must eventually and inevitably react upon themselves.

Legislation based on the common good is apt to be just, and as such to be respected by the majority. Law is not always synonymous with justice, however. Justice is unselfishness, and can only emanate in the acts of people who seek to promote, and who properly gauge, the common weal. Law

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century, were zealous Christians, and their successors, the German princes who reigned at Paris, Toledo, Arles and Ravenna, "listened with reverence to the instructions of bishops," and probably governed according to the principles above stated. On the other hand, we find that the followers of Ida and Cerdic brought to their settlements in Britain, "all the superstitions of the Elbe." While Christianity was sweeping Teutonic Europe, "the rulers of Wessex and Mercia were still performing savage rites in the temples of Odin and Zernebock." Britain for a time was cut off from Europe; and until Christianized in the seventh century, the history of Britain since evacuation by the Romans, was largely mythical. The islands indeed were "objects of a mysterious horror," the ground of one province being reported to be "covered with serpents, and the air . . . such that no man could inhale it and live." "To this desolate region the spirits of the departed were ferried over from the land of the Franks at midnight. A strange race of fishermen performed the ghastly office. The speech of the dead was distinctly heard by the fishermen; their weight made the keel sink deep in the water; but their forms were invisible to mortal eye." However, Augustine, a Roman abbot, gained the support of the Frankish king, Charibert, of Paris—whose daughter Bercta had married Ethelberht, the barbarian king of Kent, whom she had failed to convert to Christian-



is the expression of human interest, a true index of brotherhood. To the degree that Law veers from the harsh and ruthless to the considerate and just, to exactly that degree is human brotherhood shown. The moral state of a government is at once evident in its practiced laws, just as the physical state of a people is indicated by the laws, oppressive or otherwise, under which they live. History shows many periods in which the state of the people must have been low, for oppression was extreme. But history proves also that the underlying power, the controlling factor, has been the people, notwithstanding that their power has so often, in misguided action, been directed against themselves. The correcting power has always been in the hands of the people. In all ages there have been instances of successful exploitation of the power of the people by selfish minor interests, but although the great body of the commonalty has so often lain prostrate, dormant, it has always had within it the power which when aroused to action has been strong enough to sweep away the unjust laws of corrupt despotic governments, and reaffirm

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ity—landed at the Isle of Thanet in 597 A. D., where Hengest had landed more than a century before. Soon Canterbury, which was the earliest royal city of German England, became a centre of Latin influence. The Roman tongue again became the language of cultured Britons, used in its worship, its correspondence, its literature. But Augustine did more than Christianize Britain. He renewed its union with the Western world. The new England was admitted into the older commonwealth of nations, and to some extent its jurisprudence for some centuries thereafter was patterned after the prevailing code of continental nations.

It was not radically influenced by continental codes, however. The religious element was strongly Roman after the coming of Augustine, but as Green points out, "The great fabric of the Roman law indeed never took root in England." Continuing, however, he writes: "But it is impossible not to recognize the result of the influence of Roman missionaries in the fact that codes of the customary English law began to be put in writing soon after their arrival."

Later, came another element of royalty, that based on the feudal system, and, as it worked out in France, under Louis le Gros, in the twelfth century, the king "possessed only a limited, incomplete, and accidental power; the power as it were of a great justice of the peace of the whole nation."—See Guizot's "History of Civilization in Europe; Macaulay's "History of England"; Green's "Short History of the English People."



those laws which are based in brotherhood and the common weal.<sup>7</sup>

The human race, though divisible into distinct groups or societies, differing in size, circumstance, and characteristics physical and moral, is cast in a common mould. There are many varieties of the species. Yet all varieties or groups resemble each other in this "that they reveal on examination certain rules of conduct in accordance with which the relations of the members *inter se* are governed." These rules or laws constitute systems of jurisprudence which vary according to circumstance, but which have common principles. A legal rule, apparently, should not be looked upon "as an isolated fact, but as the last link in an historical series."<sup>8</sup>

In the study of primitive conditions we find that almost all Aryan tribes manifested one dominating characteristic in common, for while environment, climate, and exigency of the political state brought many differing traits in the tribes of the northwestern branch of the Indo-European race—the Celts for example developing characteristics very different from those of their neighbors, the Germans, on the other side of the

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7. They might indeed safely tolerate a king in a few excesses; for they had in reserve a check which soon brought the fiercest and proudest king to reason—the check of physical force. . . .

They might allow him to overstep the constitutional line sometimes; but they also claimed for themselves the privilege of overstepping that line themselves, whenever his encroachments were so serious as to excite alarm. If not content with occasionally oppressing individuals he dared to oppress great masses, his subjects promptly appealed to the laws, and that appeal failing, appealed as promptly to the God of Battles.—Macaulay's "History of England," Vol. I, 26.

8. By far the most considerable contribution made by England to historical jurisprudence is the writings of Sir Henry Maine. The first of these, "Ancient Law," published in 1861, has probably had a more profound influence on contemporary thought than any other book of this generation. The "Early History of Institutions" and "Village Communities in the East and West" have since followed. In "Ancient Law" Sir Henry Maine proposes to trace the connection of the subject with the early history of society and its relation to modern ideas. Taking the Roman law as a typical system, he revealed for the first time to English readers the connection between the principles of forgotten lawyers and, not merely the legal ideas, but the moral commonplaces of our time. The book under-



Rhine—yet all seemed to have inherent respect for constituted authority. They suffered often, in consequence, though they would have suffered more had there been no higher control. Rome built its great empire on the basis of the customs of the Aryan peoples that constituted it—the Latins, Sabins, Etruscans. These peoples had not identical notions of law, but possessed those fundamentals which made unity possible. Western civilization, or, to be clearer, European civilization, did not begin until “the moment of the fall of the Roman Empire,” according to Guizot; but the legal systems built by the many European nations of the next ten centuries show unmistakable evidences of Roman law. All drew from the Roman experience, just as Roman civilization was drawn from earlier civilizations. In the political state, as in all other phases of life, the present is built upon the past.<sup>9</sup> We cannot escape it. Hence, sane men would not wittingly blind themselves by sweeping away the records of the past. And the past shows surprising sameness of ultimate result in the handling of human groups. Action may differ; motives have in different peoples been quite dissimilar; but the great propelling power has always been in the people. This seems almost a ludicrous, or at least an unnecessary statement, for the physical power of many men ought to be more than that of few. It undoubtedly

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mined what had been accepted as first principles by showing that they had a history. It gratified the intellectual sense by the brilliant identifications of legal ideas, obscured by differences of time and place and circumstance. It is not surprising that the influence has been even more extensive among educated laymen than among professional lawyers, for the latter are condemned by custom to disregard everything in their science but its relation to the business of the day. But “Ancient Law” set the attitude of regarding a legal rule not as an isolated fact but as the last link in an historical series.—“Encyclopedia Britannica,” 1892.

9. “When we regard the civilizations which have preceded that of modern Europe, whether in Asia or elsewhere, including even Greek and Roman civilization, it is impossible to help being struck with the unity which pervaded them. They seem to have emanated from a single fact, from a single idea; one might say that society has attached itself to a solitary dominant principle, which has determined its institutions, its customs, its creeds, in one word all its developments.”—Guizot’s “History of Civilization in Europe,” Second Lecture.



is. But physical force is not the only power. There have been instances of a minority, with greater strength of purpose, riding to its objective on the physical strength of the majority, the unity of mankind in such cases being real but not necessarily bringing common good. All such schemes, however, seem to depend for success upon the sufferance or inertia of, or the lack of understanding by, the majority. Unity has been necessary, as the balance of power has always rested with the people. In Egypt the theocratic principle pervaded the entire community, and was a success. The success was repeated in India, under like conditions. But an attempt to subject Europe to a theocratic organization in the middle ages failed because unity was not possible. The celibate clergy of the Roman Catholic Church constituted an element foreign to the people, and so it was undermined, whereas the Egyptian theocracy, having a married clergy constituted a complete society in itself, borrowing nothing from without, and so was able to lead the people without clashing with their instincts.

Although the histories of nations seem to show differently, the universe has been basically governed by the will of the people. Unity of commonalty and higher classes has been necessary for the long continuance of any system of government. Unity denied to the people of Rome as a theocracy had, in earlier centuries, been achieved by Romans as militarists. The respect of Aryan peoples for constituted authority made possible, in the first Roman Republic and the succeeding Roman Empire, the domination of a victorious caste which imposed upon its laws the principle of force. But freedom-loving peoples encompassed the Empire, and their weight eventually was more than the militaristic power could bear. So the Empire collapsed.

The laws that have lived through the ages, those upon which, as will be seen, American laws have been based, have come from the people, the almost subconscious demand of the mass of mankind for rules of conduct which would bring to the



majority the greatest good, the surest protection. Unjust arbitrary laws can have no permanency. Despotism defeats itself, for human brotherhood is strong and common in man. This lesson, it would seem, was well before the Dutch Government at the time of the settlement of New York. Wessenaer, in his "Historia van Europa," which was published in 1621-32, gives some light on the state of the colonists of New Netherland. Certainly, human brotherhood was evident in the proposals made by the homeland for the administration of the colony. It was realized that "'tis better to rule by love and friendship than by force."<sup>10</sup> Law-abiding and tolerant though he may be, slow to discern though he has often shown himself to be, Man nevertheless eventually rises against unjust rule by a minority. The Ship of State may be driven far from its proper course, by contrary elements during stormy periods, but when calm comes again one realizes that Man is at the magnetic poles, able to correct the constitutional drift, and point the Ship of State ultimately to the harbor of Good Government.

Analysis of the history of all civilization demonstrates this fact. Love of freedom, inherent in man, encompasses the laws of the universe. Oppression in England caused the commonalty, championed by the nobility, to wrest from their sovereign, in 1215 A. D., a declaration of their common rights, a recognition of their right to be free men, subject to the Law but not to the danger of losing life, limb, or estate at the caprice or will of the King. Thereafter, all English kings were called upon to acknowledge that "the King in his Realm has

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10. "That being Freemen, they be settled there on a free tenure; that all they work for and gain be theirs to dispose of and to sell it according to their pleasure; that whoever is placed over them as Commander act as their Father, not as their Executioner, leading them with a gentle hand; for whoever rules them as a Friend and Associate will be beloved by them, as he who will order them as a superior will subvert and nullify every thing; yea, they will excite against him the neighboring provinces to which they will fly. 'Tis better to rule by love and friendship than by force."—Wessenaer's "Historia van Europa."



two superiors, God and the Law" (*Rex in Regno duo superiores habet Deum et Legem*); also that "no new laws bind the people of England but such as are by common consent agreed on."<sup>11</sup> King John contrived to shuffle out of Magna Charta and off the earth, but the Fundamental Laws of England were kept well before his successors.<sup>12</sup> Guizot brings to light an interesting fact, one not shown strongly by most English historians, to wit: That Magna Charta was kept in vigorous life through the next four centuries, from the thirteenth to the sixteenth, by no less than thirty confirmations of its privileges, and considerable expansion of them. Also, a hopeful spirit of political freedom followed the Reformation in England, the people finding "its fulcrum and the active means of

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11. The prerogatives of the sovereign were undoubtedly extensive. . . . But his power, though ample, was limited by three great constitutional principles, so ancient that none can say when they began to exist, so potent that their natural development, continued through many generations, has produced the order of things under which we now live.

First, the king could not legislate without the consent of his parliament. Secondly, he could impose no taxes without the consent of his parliament. Thirdly, he was bound to conduct the executive administration according to the laws of the land, and, if he broke those laws, his advisers and his agents were responsible.—Macaulay's "History of England," Vol. I, 24-25.

12. While the sovereigns were disposed to violate the three great principles under which the liberties of the English people were protected, Macaulay points out that "no English king has ever laid claim to the general legislative power," but by exercising his power to pardon offenders, the king was competent to annul virtually a penal statute. "Thus, with the help of subtle and courtly lawyers, grew up, on the doubtful frontier which separates executive from legislative functions, that great anomaly known as the dispensing power."

As to the second of the great principles, Macaulay writes: "That the king could not impose taxes without the consent of parliament is admitted to have been, from time immemorial, a fundamental law of England." John was forced to recognize it. Edward, the First, encountered such opposition, when he tried to break the rule, that he thought it expedient to yield. All the kings needed more money than parliament sanctioned, and most of them tried to get it. They were interdicted from taxing, but they claimed the right to beg, or borrow. It became a habit. They sometimes "begged in a tone not to be distinguished from a command, and sometimes borrowed with small thought of repaying. But the fact that it was thought necessary to disguise these exactions under the names of benevolences and loans, sufficiently proves that the authority of the great constitutional rule was universally recognized."



action in the ancient institutions and social conditions."<sup>13</sup> Hence, the power of the commonalty, if not the liberty of the individual, was carried most clearly into the seventeenth century, the first one of importance in American history. With the ruin of the feudal aristocracy and the passing of landed wealth from the higher nobility to the inferior nobility, from the aristocracy to the gentry, during the sixteenth century, with the increasing importance of the men of commerce and the improvement in the lot of the peasant class during the prosperous reign of Elizabeth, the English House of Commons began to have that power upon which representative government stands; and, as the seventeenth century dawned, the Lower House had far greater strength and prestige than the House of Lords. Wealth was represented in the House of Commons; the lords were poor. And the people had general knowledge of what were their rights. Nevertheless, during the first decades of that century, the struggle of the people against the increasing tyranny of their kings reached such a point that safety, for certain freemen who would not bow to

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The Plantagenets and Tudors had good reason to know that although the commonalty might overlook many violations of their rights, they resisted all attempts to usurp Parliament's power over the public purse. "Henry the Eighth, for example, "encountered no opposition when he wished to send Buckingham, and Surrey, Anne Boleyn and Lady Salisbury, to the scaffold. But when, without the consent of parliament he demanded of his subjects a contribution amounting to one-sixth of their goods, he soon found it necessary to retract. The cry of hundreds of thousands was, that they were English and not French, freemen and not slaves." Charles the First usurped this power, but it cost him his head. When the Long Parliament assembled in 1640, it was "universally said, and by many sincerely believed, that the legal reform would suffice for all things; that in the ancient laws and customs of the country there was that which would remedy all abuses."—See Macaulay's "History of England"; Green's "Short History of the English People"; and Hallam's "Constitutional History of England from the Accession of Henry VII to the Death of George II."

13. When we glance at the state of free institutions of England at the end of the sixteenth century, we find first, fundamental rules and principles of liberty, of which neither the country nor the legislature had ever lost sight; second, precedents, examples of liberty, a good deal mixed it is true, with inconsistent examples and precedents, but sufficing to legalize and sustain the claims, and to support the defenders of liberty in any struggle



the despotism of the sovereign, seemed to lie only in flight from their native land. Some went to the Netherlands, whence they, the Pilgrims, crossed to America. Open defiance of the fundamental laws of England by King James and more so by Charles the First embittered the people. The Puritans looked with stern severity on the attempt by Charles the First to extort a forced loan from the people in 1627, after Parliament had refused to grant him the sum he needed. The commonalty and gentry grimly resisted. John Hampden, a young Buckinghamshire squire, was haled before the King's Board of Loan Commissioners, to show cause why he had not contributed at the demand of the king's collectors. Though he faced a return to prison, and possibly death, John Hampden did not flinch. To the commissioners he said: "I would be content to lend, but fear to draw on myself that curse in Magna Charta which should be read twice a year against those who infringe it." He went back to prison, but in the next year, 1628, the parliamentary elections returned very few of the King's candidates. The patriots were triumphant, and on the question of personal liberty the tone of the Commons, when they met in March, was vehement. "We must vindicate our ancient liberties," said Sir Thomas Wentworth. "We must reinforce the laws made by our ancestors. We must set such a stamp upon them, as no licentious spirit shall dare hereafter to invade them." And, heedless of "sharp and menacing messages from the King," the House pursued grimly the important work it had set itself, the drafting of a Petition of Rights.<sup>14</sup>

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against tyranny or despotism; third, special and local institutions, replete with germs of liberty; the jury, the right of assembling and of being armed; the independence of the municipal administrations and jurisdictions; fourth and last, the Parliament and its power, of which the crown had more need than ever . . . . and was dependent for its very support upon the national vote.—Guizot's "Civilization in Europe," 13th lecture.

14. After stating the grievances, the Petition of Rights prayed "that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament. And that none be called to make answer, or to take such oaths, or to be confined or otherwise molested or disputed concerning the same, or for



This, which recited that "the statutes protected the subject against arbitrary taxation, against loans and benevolences, against punishment outlawry or deprivation of goods otherwise than by lawful judgment of his peers, against arbitrary imprisonment without stated charge," was delivered to the King. Charles made an evasive reply, which brought from the Commons a fearless remonstrance. Finally, Charles, with many mental reservations of which the Commons knew nothing, consented to the Petition of Rights, thus gaining the subsidy he wanted. Then he prorogued Parliament. And before it could again meet, his Church, the Anglican Church patronized by the Court, "was turning religion into a systematic attack on English liberty"; and "sober men looked forward to a day when every pulpit would be ringing with exhortations to passive obedience (to the King), with denunciations of Calvinism and apologies for Rome." Puritan England condemned this; and when Parliament met again in January, 1629, the Commons reiterated "that all affairs of the realm, spiritual as well as temporal, were cognizable in Parliament."

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refusal thereof. And that no freeman may in such manner as is before mentioned be imprisoned or detained. And that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come. And that the commissions for proceeding by martial law may be revoked and annulled, and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by color of them any of your Majesty's subjects be destroyed and put to death, contrary to the laws and franchises of the land. All which they humbly pray of your most excellent Majesty, as their rights and liberties, according to the laws and statutes of the realm. And that your Majesty would also vouchsafe to declare that the awards, doings, and proceedings to the prejudice of your people in any of the premises shall not be drawn hereafter into consequence or example. And that your Majesty would be pleased graciously for the further comfort and safety of your people to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honor of your Majesty and the prosperity of the kingdom."

The House of Lords strove to conciliate King Charles by a reservation of his "sovereign power." But the Commons demurred. "Our petition," said Pym, "is for the laws of England."—See Green's "Short History of the English People," Book VII, Chap. V.



They refused to accept a religious creed at the hands of the priesthood and the Crown, Parliament avowing that "the right to determine the belief of a nation lay with the nation itself." Even while this discussion was proceeding, the members had before them an instance of flagrant violation by the King of their Petition of Rights, so recently acknowledged. Those who had collected customs duties illegally levied by the King were summoned to the bar of the House. They appeared, but refused to answer, "pleading the King's command." When the House proceeded to protest, the Speaker announced that he had received an order to adjourn. Knowing that dissolution was imminent, the members held the Speaker down in his chair, and locked the doors, refusing to adjourn until they had reiterated the responsibility of king and ministers to Parliament. "None have gone about to break Parliaments," declared Eliot, "but in the end Parliaments have broken them." Before Parliament adjourned, the Commons passed resolutions declaring that "whosoever should bring in innovations in religion, or whatever minister indorsed the levy of subsidies not granted in Parliament" would be "a capital enemy to the kingdom and commonwealth"; furthermore, that "every subject voluntarily complying with illegal acts and demands" would be "a betrayer of the liberty of England and an enemy of the same."

Such was the situation in 1629, the year in which the Massachusetts Bay Colony charter was granted—fortunately just before the dissolution of parliament. No other parliament was destined to gather in England during the next decade, to curb the monarchical absolutism. But Puritans grimly resisted the King during the period. Rather than betray the liberty of England, thousands elected to risk their lives by crossing the seas and planting a new and free England in the wilderness of America. More than 20,000 Puritans crossed to New England between 1629 and 1640, most of them imbued with the spirit of political freedom. Bringing with them such a heritage, strengthened as they were by the great power



manifested by their own Parliament (which even in its last word, had defied the authority of the King and urged the people not to take on the yoke of worse than serfdom), cognizant as they must have been that they in America far outnumbered any other transplanted people, it is hardly surprising that the institutions of Massachusetts and the United States should be patterned after those of England, largely. In the new land wherein they could be free to exercise their instinctive "ancient Aryan liberties, sustained by equally orderly obedience to Law,"<sup>15</sup> the Puritans transplanted these principles of freedom, and built their social and political states according to their acknowledged rights, to their English birthright as declared in Magna Charta and defended by themselves, or by their fellow-countrymen so recently in the English Parliament. In America they had greater scope. Burrowing royal worms could not eat the heart of the sapling they planted. Growth was vigorous in the fertile soil of America, and the product sustained the colonists through the seventeenth and eighteenth centuries, to the time when attempts to draw the sap of the Tree of Liberty for sustenance of the Crown, without sanction by the American people, caused the colonists to fence it with their persons and forbid trespass. The attack defeated and possession conceded, the ex-colonists then began, under better auspices, to build American institutions upon the bases of their inherent liberties, guided by principles such as had probably been instinctive in man for tens of centuries. American law, based on the government of the people by the people for the people follows in some fundamentals most of the civilizations of the past. The American Constitution was conceived in, and based upon, the noblest instincts of human brotherhood. It was built of the human experience of ages. Therefore, those who enjoy its privileges should prize and uphold it, for in its functioning is the common weal.

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15. Werner, in the "Civil List and Constitutional History of the Colony and State of New York," 1889 ed.







## CHAPTER II.

### ANTERIOR TO HUDSON'S COMING.\*

The year 1609 A. D. was portentous in New York history. From opposite directions two intrepid navigators in that year entered the region now governed by the State of New York, one penetrating from the north, the other from the south. Their fundamental motives were identical, though they represented rival interests; and had they pursued their explorations of the beautiful inland waters of New York State a little further, they might have come face to face. The meeting would have been historic; it might well have been dramatic; yet, it is idle to conjecture what would have been the consequences to New York had Samuel de Champlain, representative of Henry of Navarre, King of France, and Henry Hudson, an Englishman then serving the Dutch East India Company, encountered each other somewhere in the maze of waterways in the wilderness of New York State in 1609, the year in which Champlain discovered the "Mer des Iroquois," or Lake Champlain, and Hudson sailed up the noble river that was afterwards to bear his own name. As a matter of fact, neither explorer can be looked upon as the first white man to set foot on the soil of New York; records of New York exploration go back, though not certainly, beyond the time of Columbus.

It seems probable that European vessels cruised in New York waters more than five hundred years before the "Half Moon," commanded by Hudson, entered New York Harbor. A Norseman, Thorvald (Thorwald), brother of Eric the Red,

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\*AUTHORITIES—Duruy's "A Short History of France"; Belford's "History of the United States"; Werner's "Civil List and Constitutional History of the Colony and State of New York" (1889); Chester's "Legal and Judicial History of New York," Vol. III; "Encyclopedia Britannica"; "Reports of the New York Lake Champlain Tercentenary Commission," 1909; "Chambers Encyclopedia"; "National Encyclopedia of American Biography," Vol. IV; "Champlain's Narrative of his voyages and Discoveries"; Parkman's "Pioneers of France in the New World."



is supposed to have explored Long Island Sound to New York Harbor in the year 1003 A. D., finding a wooden shed but no inhabitants. He was killed by "Esquimaux" in the next year, while exploring the New England coast, and was buried on the shore of Massachusetts Bay. During the next decade other Norsemen from Vinland, the name given to the colony at Mount Hope Bay in Rhode Island, quite possibly cruised in New York waters. Later navigators—Prince Madoc, of Wales (1170 A. D.), Nicolo Zeno (1380), John and Sebastian Cabot (1497-99)—may have passed along the New York coast; the Cabots certainly did; and it is generally believed that Verrazzano discovered both New York Harbor and the Hudson River eighty-five years before Henry Hudson headed a Dutch expedition into its waters.

Giovanni da Verrazzano (1470-1527), a Florentine navigator, had had a long and adventurous career at sea before the happening of which particular note must here be taken. He had cruised along the coast of North America, and into the St. Lawrence, as early as the year 1508. Later he had become famous, or notorious, as a corsair, preying on the rich Spanish and Portuguese commerce. In 1523 he was in command of one of four vessels fitted out by the French Government for a voyage of discovery. In that year they set sail from Brittany. Verrazzano, however, had to seek shelter in the Madieras, and there his vessel, the "Dauphine" (or "Dalfina"), weathered the storm. In January, 1524, he set sail on a westerly course, which eventually brought him to the American coast, along which he cruised northward. After an adventurous voyage he reached the French port of Dieppe in July, 1524, and lost no time in submitting report of his voyage to the King of France, Francis I. In this report, under date of July 8, 1524, the genuineness of which report by the way has been questioned, Verrazzano made reference to New York waters. It appears that he reached "the new land," (Nuova Terra) on March 10 (OS), 1524, in latitude 34°, near Cape Fear, N. C. He explored



the coast from Florida to Newfoundland, and in April discovered the Cape of St. Mary's (Sandy Hook), the Narrows, Upper New York Bay, and the mouth of the "Grande" (Hudson) River. He coasted along Long Island, anchored in Naragansett Bay, from April 21 to May 6, and then sailed northward, as far as 50° N. Verrazzano claimed the whole territory for France, and it was given the name of Francesca. The portion from the Grande (Hudson) River to the Gulf of St. Lawrence was known as La Terre d'Anormee Berge, the "Land of the Grand Scarp," meaning the Palisades on the Hudson. The name, abbreviated, became Noromberge, Noremberge, Norumberge, Norumbega. Little is known, with certainty, as to the remainder of Verrazzano's life; he is said to have made his last voyage to America in 1526, and to have been killed by natives, but another account states that he was put to death in Spain for piracy.\*

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\*In Francis Parkman's "Pioneers of France in the New World," p. 231, is the following note on the subject:

The Voyage of Verrazzano—The narrative of the voyage of Verrazzano is contained in a letter from him, dated at Dieppe, 8 July, 1524. The original does not exist. The Italian translation was printed by Ramusio in 1556, and there is another translation in the Magliabecchian library at Florence. This last is accompanied by a letter concerning the voyage from one Fernando Carli, dated at Lyons, 4 August, 1524. Hieronimo da Varrazzano, brother of the navigator, made in 1529, a large map of the world, which is preserved in the College of the Propaganda at Rome. The discoveries of Verrazzano are laid down upon it. . . . A copper globe made by Euphrosynus Ulpus, in 1542, also affirms the discovery of Verrazzano, and gives his name to a part of the continent, while other contemporary maps, notably that of Visconte di Maiollo, 1527, also contain traces of his voyage. Ramusio says that he had conversed with many persons who knew Verrazzano, and prints a paper called "Discorso d'un gran Capitano di Mare Francese," in which the voyage of Verrazzano is mentioned by a contemporary navigator of Dieppe.

Various Spanish and Portuguese documents attest the exploits of Verrazzano as a corsair, and a letter of Silveira, Portuguese ambassador to France, shows that in the spring of 1523 he had announced his purpose of a voyage to "Cathay." On the eleventh of May, 1526, he gave a power of attorney to his brother Hieronimo, the maker of the map, and this paper still exists, bearing his autograph. Various other original papers relating to him are extant, one of the most curious being that of the judge at Cadiz, testifying to his capture and his execution at Puerto del Pico. None of the early writers question the reality of the voyage. Among those



In 1525 a Spanish ship, under Stephen Gomez, entered the bays of New York and New England. Gomez referred to the region as "the Land of Gomez." In 1528 a Spanish expedition explored Florida, but no European expedition seems to have come north until 1534, when Jacques Cartier, under a commission from Francis I, took possession of Labrador for France. In the same year Cartier entered the Gulf of St. Lawrence, and in the next ascended the St. Lawrence River as far as Hochelaga (Montreal). He claimed the country for France. Spaniards were active along the Mississippi River in that decade, and French fur traders began to make plans for expansion in New York. In about 1540 the fur-factors erected a fortified trading-house, which comes into the record as Le Fort d'Anormee Berge, "on an island in a small fresh-water lake on Manhattan Island.<sup>1</sup> In the same year the factors began to build a fort, or castle, on Castle Island (Van Rensselaer's Island), in the Grand River (Hudson), near the site of Albany,<sup>2</sup> "but

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who affirm it may be mentioned Annibal Caro, 1537; Belleforest, 1570; Herrera, 1601; Wytfleit, 1603; De Laet, 1603; Lescarbot, 1612.

In 1864 Mr. Buckingham Smith questioned the genuineness of the Verrazzano letter in a pamphlet called, "An Inquiry Into the Authenticity of Documents Concerning the Discovery of North America, Claimed to Have Been Made by Verrazzano." Mr. J. Carson Brevoort answered him in a book entitled "Verrazzano, the Navigator." Mr. Henry C. Murphy followed with another book "The Voyage of Verrazzano," in which he endeavored at great length to prove that the evidence concerning the voyage was fabricated. Mr. Henry Harrisse gave a cautious and qualified support to his views in the "Revue Critique." Mr. Major answered them in the "London Geographical Magazine, and Mr. De Costa made an elaborate and effective reply in his work called "Verrazzano the Explorer." An Italian writer, Signor Descimoni, has added some cogent facts in support of the authenticity of the documents. A careful examination of these various writings convinces me that the evidence in favor of the voyage of Verrazzano is far stronger than the evidence against it. Abbe Verreau found a contemporary document in the Bibliotheque Nationale, in which it is mentioned that the "memoirs" of Verrazzano were then in possession of Chatillon (Admiral Coligny). See Report on Canadian Archives, 1874, p. 190.

1. The fresh-water lake on Manhattan Island then covered the district between what are now Franklin, Elm, Duane and Baxter streets, and emptied into the Hudson River at Canal Street; in 1796 John Fitch, navigated his steamboat on this lake, which was then called the Collect Pond.

2. "As early as 1540 some French fur traders found their way up the river that many years afterwards was 'discovered' by Hudson, and



the structure was damaged by a freshet and abandoned."<sup>2a</sup> In 1542, a French expedition, under Roberval, with Jean Alphonse as pilot, sailed for America, explored Long Island Sound, and "ascended the Norombegue or Grand River (Hudson), to the head of navigation." Maybe, the "head of navigation" meant Albany, and that it was then that it was discovered that a freshet had damaged the "castle"; the record reads that "the French abandon the country in 1543." Roberval sailed from France for America again in 1549, but he never returned to France, and may have perished at sea. One authority states that he was slain at night, in the heart of Paris.<sup>2b</sup>

In the latter half of the sixteenth century, so far as it shows exploration by Europeans in North America, the interest was focussed mainly on the southern regions, where the Spaniards were more successful than the French or the English. The French in 1578 had one hundred and fifty vessels engaged in the Newfoundland fisheries, and the Marquis de la Roche formed a temporary French settlement on Sable Island, off Nova Scotia, in 1598; but the region covered by New York and the New England States was still exclusively the land of the Indian nations. Two Dutch expeditions, under Bikker and Leyen, voyaged to America in 1597, and in 1600 (or 1604) a written plan for the organization of a Dutch West India Company "was communicated to the States-General, but was

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erected a stone fort or castle on the island in the river, near the present southern boundary of the city of Albany. Here seventy-five years later the castle, which had fallen into decay, was rebuilt as Fort Nassau by Hendrick Corstiaensen, of Amsterdam, who bore a license from the Lords States-General of Holland to traffic in furs with the natives of New Netherland. Here Henry Hudson arrived on the 'Half Moon,' September 19 (old style), 1609, under contract with the Dutch East India Company, on his exploration of the Grand (now Hudson) River. Here the Walloons, under the authority of the Dutch West India Company, which had been incorporated by the Holland government to colonize America, erected Fort Orange in 1624, on the shore of the river, near the site of the present steamboat landing."—Vol. III, p. 3, Chester's "Legal and Judicial History of New York (1911).

2a. Belford's "History of the United States."

2b. Parkman, in "Pioneers of France in the New World," p. 231.



not acted on,"<sup>3</sup> In 1602 an English expedition, under Bartholemew Gosnold, discovered Massachusetts Bay, landed at Cape Cod, and built on Cuttyhunk, one of the Elizabeth Islands, the first house erected in Massachusetts, also a fort for the protection of a colony. The expedition returned to England in the same year. In 1603 Henry IV of France appointed Samuel de Champlain General-Lieutenant of Canada. Champlain sailed in March, entered the St. Lawrence, and selected Quebec as site for a fort. Martin Pring sailed from England in April of same year, and explored the coasts of Massachusetts and Maine. In November, 1603, the French king granted to De Monts the territory described as Acadia, a vast region reaching from the latitude of Philadelphia to that of Montreal, *i. e.*, from 40° to 46° N. De Monts sailed from France in the following March, and erected a fort at St. Croix Island (Maine). One of his leaders, Poutrincourt, settled at Port Royal (Nova Scotia). De Monts returned to France, but in 1605 came again, with Champlain. They removed the St. Croix colony to Port Royal, entered the River St. John (New Brunswick), landed on Grand Manan Island, afterwards exploring the coast southward as far as Cape Cod, and claiming the whole territory for France. (The Port Royal colony was abandoned in a few years).

The English did not recognize the claims of the French, for an English expedition was operating in the same region

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3. "A suggestion was made by William Usselinex, an enterprising merchant of Antwerp, in 1604, to organize a West India Company for the purpose of reaping the benefits of commerce, and as the best means to annoy Spain. The proposition was received with favor, and the draft of a charter was prepared and informally approved. Secret overtures for peace, however, postponed the project for some time. These (peace) proposals resulted in an armistice, May 4, 1607. A truce for twelve years was agreed upon at Antwerp, April 9, 1609, at the expiration of which period, in 1621, war was renewed and the West India Company was organized."—Werner's "Civil List, State of New York," 1888, p. 3.

3. "A written plan for a Dutch West India Company is communicated to the States-General in 1600, but is not acted on."—Belford's "History of the United States," p. 17.





SAMUEL de CHAMPLAIN







at the same time. George Weymouth explored the coast of Maine in May, 1605, entered the Penobscot, and took five natives home with him. Pring was again in Maine in 1606, and in April of that year King James I, of England, granted a patent to colonize "Virginia" to two companies: the London Company could operate in "Southern Virginia" ( $34^{\circ}$  to  $38^{\circ}$  N.); and the West of England Company in "Northern Virginia" ( $41^{\circ}$  to  $45^{\circ}$  N.); the intermediate district ( $38^{\circ}$  to  $41^{\circ}$  N.) being open to both. The London Company, under Newport, Gosnold, and John Smith, with 105 emigrants, sailed in December, and founded Jamestown in May, 1607. The West of England Company, under Raleigh Gilbert and George Popham, reached Sagadahoc (Kennebec), Maine, in August, 1607, and left forty-five emigrants at "St. George." The story of the Jamestown colony is well known, but Americans are not so familiar with the story of the Maine colony. Popham died in Maine and the settlers suffered such hardships that they were glad to return to England in 1608.

Champlain, who had returned to France in 1607, was again on the high seas in the early months of 1608, bound for America, acting for merchants of Dieppe and St. Malo. At Quebec he founded the first permanent French colony established in America. Maybe, he thought the St. Lawrence River would prove to be a northwest passage to the East Indies. It seems more probable, however, that he looked upon the water course as merely a convenient route for trading with the Indians of the interior of the American continent. At all events that seems to have been his immediate purpose, even though the nobler aim of adding to the dominions of France and of finding a westerly route to India undoubtedly was the underlying purpose of all his voyages to and explorations in America.<sup>4</sup> The winter of 1608 was spent by Champlain in

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4. "With the hope of finding the highway to the riches of India, the fervor of his ardent spirit led him in his first voyage (in 1599) to project a canal across the Panama. And later on, still dreaming that a pathway might yet be found which would lead him to this golden land, he pene-



making the fort and buildings at Quebec secure and habitable. Three-fourths of the colonists died of disease during the winter.<sup>5</sup> Champlain did not despair, however. He had succeeded in establishing good relations with the Indians of the St. Lawrence, the Algonquin nation, and "preparations were made for a tour of exploration during the approaching summer," to the "lake of many fair islands" which the Algonquins had described to Champlain. Beyond the lake was the home of the Iroquois nations, the inveterate foes of the Algonquin and Huron nations. The latter proposed an expedition against the Iroquois Confederacy; and Champlain favored the proposal, maybe to see what effect a gun would have on the aborigines. So in June, 1609, he set out from Quebec accompanied by some Frenchmen, and sixty or more Indians, in twenty-four canoes. Champlain, with two compatriots, and the friendly Indians, eventually skimmed into "the Sea of the Iroquois," the lake now known by his name. On July 29, 1609, he gave battle to and defeated the Iroquois bands, spreading consternation by the use of his arquebuse.<sup>6</sup> It was an unfortunate day for France. Champlain, by some accounts, sought to be an evangelizing pioneer, to Christianize the Indians, but this affray showed him to be a warrior. Orgies

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trated through the St. Lawrence as far as the great inland seas."—Hon. Rodolphe Lemieux, in "The Champlain Tercentenary, State of New York" (1909), p. 269.

5. During the fall there were twenty-eight men in the colony, but in the early winter disease made its appearance, which worked fearful havoc among them, and twenty of them were carried to their graves."—*Ibidem*, p. 358, address by Hy. W. Hill.

6. "I looked at them and they looked at me. When I saw them getting ready to shoot their arrows at us, I levelled my arquebus, which I had loaded with four balls, and aimed straight at one of the three chiefs. The shot brought down two and wounded another. On this our Indians set up such a yelling that one could not have heard a thunder-clap, and all the while arrows flew thick on both sides. The Iroquois were greatly astonished and frightened to see two of their men killed so quickly, in spite of the arrow-proof armor. As I was reloading, one of my companions fired a shot from the woods, which so increased their astonishment that, seeing their chiefs dead, they abandoned the field, and fled into the depths of the forest."—Champlain's "Voyages and Discoveries," translated.



of torture which his savage allies inflicted upon the wounded captives on that day were probably no worse than victorious Indians had been wont to practice upon the vanquished in earlier years; and Champlain implored his allies to be more merciful; but from that day the Iroquois nations linked the French with their natural enemies, the savage Algonquins, and to the end were their implacable foe, defeating all subsequent attempts of the French, over a century and a half, to penetrate far into New York State.<sup>7</sup>

Champlain did not follow up his victory. He seemed content that it should have proved the supremacy of the gun over the arrow. Had he entrenched himself in the Lake Champlain region and planned a permanent settlement; had he even formally taken possession of the territory in the name of his king, Henry IV of France, instead of going quietly back to Quebec, the history of New York State might have been very materially changed.<sup>8</sup> Still, France had already laid claim to

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7. It followed that Champlain's adventure in the summer of 1609 had a two-fold inspiration. Beyond question he was eager to explore, to find new lands and waters for his king . . . ; but when in early July he came up the Richelieu and into the lake which bears his name, it was less as an avowed explorer than as a warrior armed with a gun—a device for killing heretofore unheard of in that wilderness. It was not at all as a trader or a missionary that he, first of all white men, made his way through the lake; but as the friend and ally of his savage Algonquin escort, who rejoiced at the chance to guide him, with his death-dealing weapon, against their ancient and unsuspecting Iroquois enemy. When the rival bands met, a shot or two put to flight those of the enemy who were not killed; and the white warrior retraced his way to the St. Lawrence. Although history must accord to Champlain priority as an explorer of the region, it won no new territory for his king, nor was there any wholesome extension of awe or respect for the power of French arms. On the contrary, the affair of the first killing by gunshot in what is New York State gained for the French the enmity of the Iroquois federation, which for well nigh a century and a half was to be, to the rulers of New France, a source of vexation, of cost in money and blood, ending only with the conquest of Canada by the British.—Frank H. Severance in "The Champlain Tercentenary," Part I, pp. 385-86.

8. In the evolution of national development, the extent and permanency of social forces largely condition their effectiveness, as seen in the impress made upon the early institutions of the Province of New York by the Dutch, who settled in the southeastern part of the Province of New York and ruled it for half a century. Had the French followed up the



the mainland of North America, from the fortieth degree northward, Champlain himself having explored the entire coast of New England, between 1604 and 1607, sailing into Plymouth Harbor sixteen years before the "Mayflower." And England, as we have seen, had not been idle in the matter of exploration during the opening decade of the seventeenth century.

Within two months of the discovery of Lake Champlain by the intrepid Frenchman, a valiant English navigator entered the southern waters of New York. The newcomer was not in the employ of the English, Henry Hudson bringing another important European nation into the list of contending powers; but had it not been for the intriguing effort made by the French king to persuade Hudson to head a French expedition, instead of a Dutch, in search of the northwest passage to the East, it is doubtful whether he would have reached New York Harbor, as a representative of the Dutch East India Company, in 1609.<sup>9</sup> However, as we have seen, neither he nor Champlain were the first Europeans to set foot in New York; so the international controversy as to priority of discovery could not properly hinge on the dates of their entry into southern and northern waters, respectively.

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discovery of Lake Champlain in 1609, and settled and permanently occupied the territory south of the 45th parallel of latitude, as effectively as did the Dutch the southeastern part of the State, the result, it is safe to say, would have been vastly different. . . . Anomalous as it may appear, that was made so largely by reason of the battle on Lake Champlain between the Algonquins and Hurons on the one side, and the Iroquois on the other, in which Champlain's use of firearms, to the utter surprise and loss to the Iroquois of three of their chiefs, made them thereafter deadly enemies of the French.—Ibid, p. 2, Historical Introduction, by Senator Henry W. Hill.

9. Henry (IV of France) also wished to create an India Company, able to rival those founded in England and Holland. He had no time to realize this idea (being assassinated in 1610).—Duruy's "A Short History of France," Vol. II, Chap. XLVIII, p. 77.

9. "Hudson was invited . . . to continue his efforts under the patronage of the Dutch East India Company, and, going to Holland to complete arrangements for the expedition, the French ambassador at The Hague, Pres. Jeannin, intrigued to obtain his services for a similar expedition under French control. This alarmed the Dutch, and they hastened to fit out an expedition—"Nat. Cyclopaedia of Am. Biog.," Vol IX, p. 453.



## CHAPTER III.

### HUDSON HEADS DUTCH EXPEDITION.\*

Henry Hudson's discoveries in 1609 were the basis for the claim by the Dutch to the territory lying along the Atlantic coast "from Delaware Bay on the South to Cape Cod on the northeast, and the great river of Canada on the north," with indefinite range westward. While the political situation in Europe delayed colonization of the new land, and Hudson did not live to see the land settled, his coming in 1609 definitely set the history of New York Dutchward. The Dutch did not penetrate far into the region to which they laid claim, but the facts that they founded the settlement which was to grow to be one of the two greatest cities in the world and another settlement which was to become the capital of a State of ten millions of people—the Empire State of a great Republic—and in addition clearly marked the Dutch impress upon the institutions and life of another State—New Jersey—and to some extent upon Pennsylvania, are cogent reasons for the statement that the Dutch had important part in the building of the paramount nation of the western hemisphere.

The known career of Henry Hudson as a navigator covers only a few years—1607-11—but in those few years he laid trails which have kept his name prominently before the American people for three centuries, and established him as one of the great English navigators of an age of intrepid explorers. Little is known of his early life. Date and place of his birth are not known, although evidently he was born in the latter

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\*AUTHORITIES—Belford's "History of the United States"; Jameson's "Encyclopedic Dictionary of American History"; "Civil List and Constitutional History of the Colony and State of New York" (Werner); "Encyclopedia Britannica"; O'Callaghan's "History of New Netherland"; Chester's "Legal and Judicial History of New York"; Smith's "History of New York"; "National Cyclopedia of American Biography."



part of the sixteenth century, probably in Bristol, possibly in London, England. He is believed to have been a descendant of the Henry Hudson who, with Sebastian Cabot, founded the Muscovy Company, a trading and exploration syndicate whose principal purpose was to discover a northerly passage to China. Henry Hudson, the younger, was, it is said, quite familiar with the Englishmen who were identified with the Muscovy Company, and grew to manhood imbued with thoughts of travel and maritime adventure. Sea charts were his especial study, and those of the North and the Arctic Circle, though for the most part unmarked, became, in the imagination of the young navigator, clear and open routes to the wealth of Canton and Cathay. He was entrusted with a command in 1607, sailing in April in a ship of sixty tons, the "Hopewell," outfitted by the Muscovy Company. In that expedition, he explored the coast of Greenland, followed the ice barrier, and reached Spitzbergen. Ice prevented him from entering Davis' Strait, but observations he made led him to "originate the theory of an open polar sea." This voyage was sufficiently promising to bring to Hudson the leadership of another expedition, which set out in the next year to find a northeast passage. He was not able to sail beyond Novaya Zemlya, much to the disappointment of the Muscovy Company, who then abandoned the quest for a time. Whereupon, Hudson went to Amsterdam, having "had a call" from Dutch people who encouraged him to continue his efforts under the patronage of the Dutch East India Company. The outcome was that Hudson was commissioned to find the passage to China "by the east or the west"; and he sailed from Texel in the "Half Moon" on April 4, 1609. The vessel was of eighty tons burthen, and carried a crew of sixteen or perhaps twenty men, some Dutch, the remainder English. Hudson was in the Barrentz Sea by May 5, and some time later reached near Costin Sareh in Novaya Zemlya. Ice stopped him in that





HENRY HUDSON







direction, and as some of his men were getting disheartened and mutinous, he turned westward, deciding to seek the passage in about  $40^{\circ}$  N. latitude indicated on the map his friend, Capt. John Smith, had sent him. On June 15, off Newfoundland, in about  $48^{\circ}$  latitude, the "Half Moon" "spent overboard her foremast," which accident compelled Hudson to put into Sagadahoc. Sailing again on July 25, the "Half Moon" was off Cape Cod on August 6. He gave the name of "New Holland" to that country and passed south, reaching Smith's Islands, near the entrance to the Chesapeake, on August 18. On August 28, he began the survey where Smith left off, at  $37^{\circ} 36'$  N. latitude. Coasting northward to Sandy Hook, he passed the "overfall" of the Delaware with scarcely any notice, "probably because a western inlet there would have taken him in amid Smith's surveys." New York Bay, in  $40^{\circ} 30'$  latitude, was evidently his objective, the way "to the South Sea or to China." He therefore set about exploring the bay without delay. On September 4 "a boat's crew put out to fish; and, according to an Indian tradition, landed on the south beach of Congee (Coney Island), the first Europeans who trod the shore of the great harbor." By September 11, or 12, Hudson had reached the mouth of the "River of the Mountains"; and during the next week the "Half Moon" sailed slowly up the great river, the Hudson, anchoring on September 19 near Albany. Another day of exploring in the ship's boats proved that the "River of the Mountains" was not the western waterway to the East. So, on September 23, the "Half Moon" was on its way down the river, its commander regretfully leaving the country which he named "New Netherland," and passing out of the harbor on October 4, bent on wintering in Newfoundland, and of exploring Davis' Strait in the following spring. His rebellious crew, however, insisted on returning home. Hence, it happened that the "Half Moon" sailed into the port of Dartmouth, England, on November 7, 1609. Had Hudson been



aware of the disfavor with which the English Government viewed his, an Englishman's, effort to aid a foreign power to territorial expansion, he would probably have tried to avoid an English port. Upon arrival at Dartmouth the "Half Moon" was seized, and its crew detained. The ship was delivered to its owners in July of the next year, but Hudson was forbidden to reënter the service of the Dutch company; he was "commanded to use his talents in the interests of his own country."

Hudson, probably, would prefer to serve his own country; yet he was a man of upright character, and his conscience led him to follow a course which brought further serious official criticism upon him. He kept faith with the Dutch East India Company by sending them a true report of his voyage on the "Half Moon." Nevertheless, he was placed in command of an English expedition early in 1610, and on April 22, sailed in the Muscovy Company's ship "Discoverie" on the voyage from which he never returned.

The Dutch were not immediately able to follow up the advantage Hudson's explorations had brought them. In the first place, the Dutch East India Company, which was chartered in 1602, was authorized to trade only in the East Indies, and on the eastern coast of Asia and Africa; therefore, only the discovery of a western way to the East would be the direct benefit that could come to the trading company from exploration of the western hemisphere. And the Dutch Government had good reason to move with extreme caution, for the nation had just emerged from several decades of warfare—as a matter of fact, it was merely a respite, a twelve years' armistice—and an aggressive colonization plan might have jeopardized the temporary truce in Europe. The powerful European nations—Spain, France, England, Portugal—were all especially sensitive in matters that directly or indirectly affected their foreign trade, and the age was one of astonishing activity at sea. The rivals of Spain, in American exploration, probably expected to



find such treasure fields as were Spain's in South America; all longed for the time when their intrepid navigators would be returning to home ports bringing wealth from America, and beyond, as fabulous as that which the Spanish galleons had been bringing to Spain. Next to the East, America was the land of untold wealth; all nations expected to find in its mountains natural storehouses of precious metals and stones; and if, as well, one nation should find the waterway through America to China and the South Sea, the future prosperity of that fortunate nation would be assured for ages to come.

So, while Hudson's report exploded Hakluyt's myth, "that near 40° N. latitude there was a narrow isthmus, formed by the Sea of Verrazzano, like that of Tehuantepec or Panama," and while the political situation in Europe made free movement, in colonization, by the Dutch Government inadvisable, it may be presumed that the Dutch were well aware that Hudson's discoveries opened an advantageous way for Holland to gain a foothold in America, at an opportune moment in the near future, when uncertainty had passed from the home situation. Meanwhile, the Dutch Government probably looked with favor upon private efforts to open the way for the settlement of New Netherland.

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## CHAPTER IV.

### THE EARLY DUTCH TRADERS.\*

Private enterprise soon developed a satisfactory volume of trading with the aborigines of the region through which Hudson's "River of the Mountains" ran. "For three years after Hudson's return the little round-prowed vessels of the Dutch busily traversed the Mauritius." Possibly as early as 1610, though perhaps not until 1613, some buildings were erected on Manhattan Island, for the temporary purposes of the traders.<sup>1</sup> Captains Hendrick Corstiaensen (or Christiaensen) and Adriaen Block jointly equipped a vessel for a voyage in 1611 or 1612. They brought back rich furs, and in the next year sailed again, Block having command of the "Tiger" and Christiaensen being skipper of the "Fortune," which vessels had been outfitted by three Amsterdam merchants. Another vessel was the "Little Fox," commanded by Jan de With (John de Witt). Cornelis Jacobssen May was captain of the "Fortuyn"; and still another trading vessel was the "Nightingale," whereof Thys Volckertssen was skipper." Captains Block and Chris-

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\*AUTHORITIES—Lossing's "Our Country"; Parkman's "Pioneers of France in the New World"; Chester's "Legal and Judicial History of New York"; Coe's "Founders of Our Country"; "Encyclopedia Britannica"; Green's "Short History of the English People"; Werner's "Civil List and Constitutional History of the Colony and State of New York"; O'Callaghan's "History of New Netherland"; Belford's "History of the United States"; Eastman's "Courts and Lawyers of Pennsylvania"; Scott's "The Courts of the State of New York"; "Description of the Province of New Albion," in the New York Historical Collections, second series, I, 325; Daly, in "History of the Bench and Bar of New York" (1897).

1. "1610. The Dutch put up a few rude hovels on Manhattan Island, as a temporary shelter for the sailors: the origin of New York City."—Belford's "History of the United States," p. 19.

1. "For three years after Hudson's return, the little round-prowed vessels of the Dutch busily traversed the Mauritius. The chief station was on Manhattan Island; though only a fort and one or two small buildings had been erected—and perhaps not even these until 1613."—"New York Civil List," 1889, p. 4.



Christiaensen spent the winter of 1613-14 on Manhattan Island. Block built a yacht of sixteen tons, the "Onrust" ("Restless"), during the winter—the "first vessel built by white men in its waters."<sup>2</sup> In the spring of 1614, he sailed through Hellegat,<sup>3</sup> and into the Housatonic and Connecticut rivers. He followed the course of the latter, which he called the "Varsche" (Fresh Water) River, for a long way. He also explored Long Island Sound thoroughly, discovered Narragansett Bay, and followed the New England coast as far as Nahant Bay, which he considered "the limit of New Netherland." Block Island is named after Adriaen Block, though the Dutch called it "Visscher's Haeck," and Captain May had seen the island before Block. May undertook important explorations southward in the same year (1614), as far as Delaware Bay. The northern cape is known by his name and to the southern cape he gave the name "Hindlopen." Nine years later he established a fort, known as Fort Nassau, near the site of the present town of Gloucester.<sup>4</sup>

While Captains Block and May were engaged in exploring the seacoast north and south of New York, in 1614, Captain Christiaensen explored the Hudson, and traded with the Indians in those waters. In that year, or the next, he erected a fort on Castle Island, "on the west side of the river, a little below the later site of the city of Albany."<sup>5</sup> In the autumn of

2. Ibid, p. 5.

3. East River; named Hellegat (corrupted into Hell Gate) after a branch of the Scheld.

4. "In 1614 Captain Cornelis Jacobson Mey in the ship "Fortune," visited it, and gave his name to the northern cape, while the south cape he called Hindlopen, after one of the towns in the province of Friesland. . . . In the same year (1623) Captain Mey, before referred to, explored the Delaware River, called by the Dutch the South River, and established Fort Nassau, in the vicinity of the present town of Gloucester, a few miles below Camden. This was the first settlement of Europeans on the Delaware."—Eastman's "Courts and Lawyers of Pennsylvania," p. 3.

5. Chester's "Legal and Judicial History of New York," Vol. I, p. 7, and Vol. III, p. 3.

5. (Captain) May also, in 1614, explored the southern shore of Long Island, and the Atlantic coast to Delaware Bay. The same year Captain John de Witt, in the Little Fox, sailed up the North River, and gave his



1614 he turned his vessel homeward. He had had satisfactory dealings with the natives, it would seem, although presumably he still had room in his ship for any peltries his fellow-navigator, Adriaen Block, might have accumulated at Cape Cod, where a trading post had been established. Probably, it was by previous arrangement that Christiaensen touched at Cape Cod when homeward bound. He would at least have been on the lookout for Captain Block, for he of course knew that Block had lost his ship, the "Tiger," by fire, off Manhattan Island in 1613, and also that the little yacht, the "Onrust"—which the sailors had built on Manhattan Island during the winter and in which Block had carried out his important explorations in the spring and summer of 1614—was hardly a deep-seagoing craft. So, when Christiaensen appeared off Cape Cod, Block was probably glad to leave the "Onrust" and the trading-post in charge of his assistant, Hendricksen, and step aboard the "Fortune," for the trip across the Atlantic, as a passenger, to report.<sup>6</sup>

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name to one of the islands near Red Hook. In this year also Christiaensen established the first great trading post upon the river. It was built upon Castle Island, near Albany, and was called Fort Nassau, in honor of the family of the Stadtholder.—"New York Civil List," 1888, p. 5.

5. The States-General, in the latter part of 1614, chartered a company for the colonization of the country visited by this expedition, granting to the interested parties in this enterprise a three years' monopoly of trade with the territory between 40 and 45 N. latitude. This region was called New Netherland. To prosecute the business of the company so chartered Christiaensen (one of the commanders in the former expedition of five vessels) built a fort or trading post on Castle Island, near the present city of Albany.—"Encyclopedia Britannica," review of the United States.

5. "1615. The Dutch establish a commercial post at Auranea, or Orange (now Albany), on Castle Island in the Hudson, on the site of the castle begun by the French about 1540."—Belford's "History of the United States."

6. Among the bold navigators who came from Holland to Manhattan was Adrien Block. His vessel was the "Tigress." Late in the autumn of 1613, when she was laden with bear skins and was about to depart for Amsterdam, she accidentally took fire and was burned to a useless wreck. The Indians kindly offered the shelter of wigwams to the Dutchmen, but they, regarding them too frail to keep out the winds and snows, built for themselves rude log huts where the warehouses of Beaver Street now stand, and went cheerily to work to construct a new vessel. Before spring,



Not only on matters of trade was it necessary for the navigators to report to their employers, or business associates, in Amsterdam. They had made important territorial discoveries; and possibly they felt as had Francis I, of France, in the days of Cartier—that this land was indeed “the extremity of Asia towards the West.” At all events, they wished to establish the right of the United Provinces of the Netherlands to it. Still, they probably doubted whether they could substantiate the claim, without armed support by the Dutch Government, in view of the somewhat ominous and embarrassing meeting they had had with an English navigator. This Englishman, Captain Argall, had sailed into New York waters during the winter of 1613. He was in command of an armed British ship, and was bent on asserting the right of the Virginia companies and of Britain to the land the Dutch sailors were standing on, and to the territory Block and his associates were hoping to win for the Dutch. Argall demanded tribute, and it was promised by Christiaensen, the “superintendent” at Manhattan.<sup>7</sup>

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the oaks . . . were converted into a trim-built and staunch yacht of sixteen tons. . . .

Early in the spring of 1614 Block sailed from Manhattan in the “Onrust” (and after some months of exploring) reached Nahant. . . . There the “Onrust” fell in with the “Fortune,” commanded by Block’s friend, Hendrick Christiaensen, who was about to sail for Holland. Block left his own vessel in charge of another navigator and sailed for Amsterdam with his friend.—Lossing’s “Our Country,” V. 1, 214.

7. “1613. De Saussaye erects a French colony at St. Sauveur, Mount Desert Island, Maine. . . . Argall, in an armed vessel from Virginia, captures and pillages St. Sauveur, and destroys De Mont’s deserted settlements at St. Croix and Port Royal. He enters New York Harbor and finds some hovels erected by the Dutch on Manhattan Island.”—Belford’s “History of the United States.”

7. “. . . the English asserted their title to all the territory covered by the Virginia patent, and in 1613 Capt. Argel was sent out by Sir Thomas Dale, Governor of Virginia, to dispossess the French at Port Royal and St. Croix. On his return, in the month of November, he ‘visited the Dutch on Hudson’s river, who prudently submitted for the present, Christaensen, the Superintendent, agreeing to pay tribute in token of dependence on the English crown.’”—Werner, in “New York Civil List,” 1888, p. 5.



It hardly seems possible that the returning navigators could have known of another portentous happening of that year. However, upon arrival at Amsterdam, they were no doubt soon made aware that the States General, or Parliament, had, in the previous March, published a decree offering certain important and exclusive trading rights to discoverers of new lands. So, after hearing the reports of Block and Christiaensen, the Amsterdam merchants who had equipped the five vessels they and their fellow-navigators had commanded in 1613 lost no time in complying with governmental requirements, for within two weeks of the return of the "Fortune," an association of adventurers was formed, a cartographer drew a map of the newly-discovered regions, and a deputation journeyed to the Hague, to report the finding to the States General, at the palace of the Counts of Holland, with the intention of course of claiming the exclusive right to trade in the said regions for three years, in accordance with the offer by the government. The deputies appeared before the "twelve high and mighty lords" of the Great Council; and they, seated around a table, listened with interest to the narrative of the deputies—told possibly by Adriaen Block himself. His map was spread upon the oval table before them, to illustrate the narrative; and, after due deliberation, the States General, on October 11, 1614, signed and sealed a charter which granted to these deputies and their associates, "all now united into one company," the exclusive right to trade in the "new lands situated in America, between New France and Virginia . . . . and called New Netherlands." The region was defined as extending from latitude  $40^{\circ}$  to  $45^{\circ}$  N., with the westward limit undetermined, of course. The monopoly was to be effective on January 1, 1615, and to embrace four voyages within three years from that date. A fac-simile of this charter is given in Judge Charles P. Daly's article on the State of Jurisprudence during the Dutch Period," on page 3 of the "History of the



Bench and Bar of New York" (New York History Company, 1897); a translation of the same is given at foot hereof.<sup>8</sup>

So, for another three years, this Amsterdam syndicate of shipowners, merchants, and navigators, either as the Amsterdam Company, the New Netherland Company, or the United New Netherland Company, controlled the operations of white men within the territory; or at least they had the trading monopoly so far as it lay within the power of the States General of the United Netherlands to give it. Navigators of other nations, possibly, would not heed the charter, but by it the Dutch Government forbade "any other person from the United Netherlands to sail to, navigate, or frequent" the New Netherland during the existence of the charter, under pain of confiscation of any trade advantage secured and the infliction of a heavy fine. By the way, this was the first state document in which the name "New Netherland" was used.

The three years, 1615-17, were marked by several important and exciting happenings. Cornelius Hendricksen, who had

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8. The STATES GENERAL of the United Netherlands, to all to whom these presents shall come, Greeting.

Whereas, Gerrit Jacobz Witssen, antient Burgomaster of the City of Amsterdam, Jonas Witssen, Simon Morrissen, owners of the ship named the "Little Fox," whereof Jan de With has been Skipper; Hans Hongers, Paulus Pelgrom, Lambrecht van Tweehuyzen, owners of the two ships named the "Tiger" and the "Fortune," whereof Adriaen Block and Hendrick Christiaensen were Skippers; Arnolt van Lydergen, Wessel Schenck, Hans Claessen and Berent Sweertssen, owners of the Ship named the "Nightingale," whereof Thys Volckertssen was Skipper, merchants of the aforesaid city of Amsterdam; and Peter Clementssen Brouwer, Jan Clementssen Kies and Cornelius Volckertssen, Merchants of the city of Hoorn, owners of the Ship called the "Fortuyn," whereof Cornelis Jacobssen May was Skipper, all now associated in one Company, have respectfully represented to us that they, the petitioners, after great expenses and damages by loss of ships and other dangers, had, during the present year, discovered and found with the above named five ships certain New Lands situate in America, between New France and Virginia, the Seacoasts whereof lie between forty and forty-five degrees of Latitude, and now called New Netherland: And whereas We Did, in the month of March last, for the promotion and increase of Commerce, cause to be published a certain General Consent and Charter setting forth that whosoever should thereafter discover new havens, lands, places or passages, might frequent, or cause to be frequented, for four voyages, such newly discovered and found



been left at Cape Cod with the "Onrust" in 1614, explored the Delaware Bay and River, "probably as far as the falls near Trenton," in 1616, in that little vessel; and on the site of Philadelphia he had ransomed three Dutch traders who had fallen into the hands of the Indians.<sup>9</sup> Evidently, the natives had not looked with friendly eyes upon the evidences that were before them, in the building of trading-posts and forts at Manhattan, Albany, and elsewhere, that the white men were

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places, passages, havens, or lands, to the exclusion of all others from visiting or frequenting the same from the United Netherlands, until the said first discoveries and finders shall, themselves, have completed the said four voyages, or caused the same to be done within the time prescribed for that purpose, under the penalties expressed in the said Octroy, &c., they request that we would accord to them due Act of the aforesaid Octroy in the usual form:

Which, being considered, We, therefore, in our Assembly having heard the pertinent Report of the Petitioners, relative to the discoveries, and finding of the said new Countries between the above named limits and degrees, and also of their adventures, have consented and granted, and by these presents do consent and grant, to the said Petitioners now united into one Company, that they shall be privileged exclusively to frequent, or cause to be visited, the above newly discovered lands, situate in America, between New France and Virginia, whereof the Seacoasts lie between the fortieth and forty-fifth degree of Latitude, now named New Netherland, as can be seen by a Figurative Map hereunto annexed, and that for four voyages within the term of three years, commencing the first of January, Sixteen hundred and fifteen next ensuing, or sooner, without it being permitted to any other person from the United Netherlands to sail to, navigate, or frequent the said newly discovered lands, havens, or places, either directly or indirectly, within the said three Years, on pain of Confiscation of the vessel and Cargo wherewith infraction hereof shall be attempted, and a fine of Fifty thousand Netherland Ducats for the benefit of said discoverers or finders; provided, nevertheless, that by these presents we do not intent to prejudice or deminish any of our former grants or Charters; And it is also Our intention that if any disputes or differences arise from these Our Concessions, they shall be decided by Ourselves.

We therefore expressly command all Governors, Justices, Officers, Magistrates, and inhabitants of the aforesaid United Countries, that they allow the said Company peacefully and quietly to enjoy the whole benefit of this our Grant and consent, ceasing all contradictions and obstacles to the contrary. For such we have found to appertain to the public service. Given under Our Seal, paraph and signature of our Secretary at the Hague, the xith of October, 1614."

9. Efforts were made to obtain a four years' trading charter for that region also, but the States General, considering the domain as part of the province of Virginia, would not grant one—Lossing's "Our Country," vol. i, p. 215.



not merely temporary dwellers in their domain. Trading had been vigorously prosecuted on the Hudson River, with at least one very deplorable result. Captain Christiaensen was murdered by an Indian "soon after he had finished the trading house and defences at Fort Nassau (Albany)." There is reason to believe that this was in 1615.<sup>10</sup>

Christiaensen probably had been the chief superintendent, or factor, of the New York and Hudson sectors, and possibly of the whole region of the New Netherland. His place and responsibility were taken by Jacob Eelkins, a former Amsterdam clerk. Eelkins administered the trust well, and established better relations with the Indians. Fort Nassau (Albany) seems to have been an important outstation, but the main station probably was on Manhattan Island, the storehouses there being large and making "the little hamlet a social village." The Fort Nassau station was abandoned in 1618, for in the spring of that year a freshet had seriously weakened the defences on Castle Island, and had caused Eelkins to remove the trading post during that summer to the mouth of the Tawasentha, now known as Norman's Kill. He erected a fort on the bluff, and there, a little later, "a treaty of friendship was made with the Five Nations (the Iroquois Confederacy), and which was kept inviolate until New Netherland passed into the possession of the English, and long afterwards." Had he not done so, overwhelming disaster might have ended the New Netherland experiment in its infancy, "for that confederacy

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10. The states-general, in the latter part of 1614, chartered a company for the colonization of the country visited by this expedition. . . . This region was called New Netherland. To prosecute the business of the company so chartered, Christiansen, one of the commanders in the former expedition of five vessels, built a fort or trading post on Castle Island, near the present city of Albany.—"Encyc. Britannica," in sketch of The United States of America.

10. Hendrick Christiansen was murdered by an Indian soon after he had finished the trading house and defences at Fort Nassau, and was succeeded in command by Jacob Eelkins, who had been a clerk in Amsterdam.—"New York Civil List" (1888), p. 6.



was strong enough to have swept from the face of the earth all European intruders."

The charter was not renewed to the Amsterdam Company in 1618, but no other charter was granted for a few years. It was a period in which any Dutch trader had equal right to gather for himself what advantage he could in trading with the natives of the region. There were several reasons why the Dutch Government was inactive during this period. Dutch merchants who had noted with what marked success the Amsterdam Company had carried on their exploitation of the American Indian during the period of the charter exerted all political pressure possible to prevent a renewal of the monopoly; but there were other cogent reasons why the colonization or exploitation of New Netherland was of less immediate importance to the United Netherlands than other matters which gravely affected the home situation at that time. The struggle between the States-General and the ruling house was at its height; and in 1619 reached such a grave crisis that Jan van Olden Barneveldt, the Grand Pensionary or Chief Magistrate of Holland, an incorruptible patriot representing the Popular Party, the Remonstrants, fell a victim of his "jealous, malicious and unscrupulous prince," Maurice of Nassau pursuing the feud to the bitter end, which was the execution of Barneveldt in 1619. Grotius, also of the Provincial Party, was condemned to imprisonment for life.

While for a time the internal struggle, and the greater danger ever present in the suspended sword of Spain, which might fall at any moment, palsied action by the States-General in matters of New Netherland, these grave happenings actually hastened the colonization of the new land. "Indeed, it may be said that the occupation of New Netherland by the Dutch was due entirely to the great continental struggle, in which the Dutch Republic played so important a part. The existence of the States-General being threatened, they sought to save



themselves by extraordinary exertions in their foreign relations." If the homeland should revert to an intolerable monarchy, the people might at least have a new land, in which they might work out their republican plans with greater safety. This feasibly may be deemed to have been one of the factors which impelled the States-General, in 1621, to incorporate a trading company, empowered to colonize and govern New Netherland—with immense latitude of governmental authority—for a term of twenty-four years, with a pledge of renewal. By this legislative act, the States-General, in the days of insecurity and danger for the people in Europe, indicated that it contemplated the development of a separate and independent State, one in which "the only relation toward the mother country was that of alliance and obligation to aid in war against alien enemies." Another impelling factor with the States-General may have been the warning conveyed by an English captain to the Dutch he had been surprised to find well established on Manhattan Island one summer day in 1619, when he sought refuge in New York Bay. This Englishman, Captain Dermer, warned the "traffickers to leave His Majesty's domain as quickly as possible"; and although the New Amsterdam Dutch "went on smoking their pipes, planting their gardens, and catching beavers and otters," after having quietly parried Captain Dermer's thrust with the remark: "We found no Englishmen here, and hope we have not offended," they probably lost no time in reporting the incident to the home authorities. A Frenchman, who happened to come into New York waters a year or so later, was equally incensed at sight of the Dutch settlers, though his demand was that the latter recognize the sovereignty of France. Possibly, also, the departure of the English Pilgrims from Holland in 1620, and the action of the English king, James I, in granting the Plymouth Company a charter to colonize "New England," between 40° and 48° N., was not the least factor which brought to the States-

General of the United Netherlands in 1621 the realization that unless they took speedy action the New Netherland across the seas might forever be lost to Holland. So they proceeded to charter the Dutch West India Company. And, to make sure that the company so chartered should be able to grasp—for themselves and Holland—whatever advantage they might find in any part of the western continent, they clothed the Dutch West India Company with “almost regal powers to colonize, govern, and defend not only that little domain on the Hudson, but the whole unoccupied coasts of America from Newfoundland to Cape Horn, and the western coast of Africa, from the Cape of Good Hope far northward.”







## CHAPTER V.

### THE DUTCH WEST INDIA COMPANY.\*

The West India Company was chartered on June 3, 1621, with jurisdiction for twenty-four years from the first day of July of that year. The charter was patterned somewhat after that granted to the Dutch East India Company; and among its extraordinary powers were the rights to employ soldiers and fleets, build forts, negotiate treaties "with the princes and natives of the countries comprehended therein," and establish the necessary offices for the keeping of "good order, police, and justice"; in fact, anything that would promote trade. The charter forbade all the inhabitants of the United Netherlands to sail within the sphere of trading of the Dutch West India Company save those who served that corporation.

But, while the charter contained all the guarantees of freedom in social, political, and religious life necessary for the founding of a free state, the home government held supreme supervision, the court of final resort being the States-General. In all vital governmental functioning by the West India Company the States-General was represented. The government of the West India Company was vested in five separate chambers of managers, one chamber in each of five cities of the mother country. Executive powers were entrusted to a board, or college, of nineteen delegates, one of whom was to represent the

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\*AUTHORITIES—O'Callaghan's "History of New Netherland"; Hart's "History of the United States" Smith's "History of New York"; "History of the United Netherlands"; "Encyclopedia Britannica"; "History of the Bench and Bar of New York" (New York History Co., 1897); "Civil List of New York," 1888; Green's "History of the English People"; Chester's "Legal and Judicial History of New York"; Lossing's "Our Country"; Champlain Tercentenary Commission Reports, State of New York; Thalheimer's "Outline of General History"; Henry Cabot Lodge's "A Short History of the English Colonies in America"; John Lord's "American Founders—Beacon Lights of History."



States-General. The government was to provide the company with ships of war in case of need, but the admiral to command said ships of war must be the appointee of the States-General. And while the company might make "conquests of territories and treaties with native chiefs at their own risk," they were required to submit their instructions to their governors to the approval of the home parliament; and their officers, civil and military, were all required to take the oath of allegiance to the States-General.

Colonization was not, however, the main purpose of the corporation. Its members, those who subscribed its authorized capital of seven millions of florins (\$2,800,000), were mainly men of trade, shrewd, prosaic, level-headed merchants of a great commercial nation; and their money was proffered to promote trade enterprises, not to further national schemes for territorial expansion. True, they recognized that the Dutch West India Company was to be, to all intents, an armed commercial monopoly, and that armed conflict with ships of Spain and Portugal might be before them; but such a contingency would be only in defence of commercial possessions, or to win trading spheres. The States-General may have hoped, or shrewdly calculated, that the operations of the West India Company would ultimately develop a populous Dutch colony based on agricultural production and not commerce; but the original undertakers of the West India Company undoubtedly considered that their syndicate was to be essentially a commercial corporation, one that would function just as the Dutch East India Company had for two previous decades. Commerce had been the aim of all Dutch efforts in America up to that time; and trading posts, with the necessary protecting forts, were the only degrees of settlement that the promoters of the West India Company originally planned to establish. For the protection of their trade routes, or rather of their sphere of trading, they were soon, however, forced to encourage legiti-

mate colonization; and this, indeed, was a stated condition of their charter; nevertheless, all the acts of succeeding administrations in New Netherland, under the West India Company, indicate that commerce was the propelling factor, the main objective. Such cannot be said of all American colonies. Adventure gave birth to Virginia; religious persecution settled New England; but New York seems to have grown from the seed of commerce.<sup>1</sup> Loyalty probably was as strong in the early settlers in Manhattan and New Netherland as in other American peoples; sincerity and honesty of purpose were perhaps as evident in them as in others; their personal traits were, it may be assumed, as commendable as those of their English neighbors; but it would seem that nationalism was not very strong in the earliest colonists of New York. Indeed, it would be surprising if it were, buffeted as they had been for decades in Europe, in the maelstrom of conflicting nations.

Viewed in the light of the more stable conditions of national existence in modern times, some of the actions of leading men of the New Netherland project must be classed as unpatriotic. William Usselinx, the merchant who first suggested a plan for the organization of a Dutch West India Company, was not averse to forming a Swedish West India Company, in 1627, for the colonization of the Delaware River region, which he knew had been discovered by Dutchmen. Again, Peter Minuit,

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1. Adventure brought men to Virginia; politics and religion to New England; philanthropy to Georgia; but New York was founded by trade for trade and for nothing else. The settlement on the island of Manhattan was due to the active spirit of Dutch commerce—"A Short History of the English Colonies in America," by Henry Cabot Lodge, p. 285.

1. Among the causes which gave birth to the province of New Netherland, and stimulated the industry of its citizens, none were so marked as the desire of gain. Religious persecutions peopled New England and Virginia. Colonists were drawn to the inhospitable coasts of the former by the prelates; to the fertile bottoms of the latter by the Roundheads. But neither religious nor political persecution stimulated in any way the settlement of America by the Dutch. Trade was their great aim, and edicts and ordinances for its regulation, especially with the Indians, entered largely into their legislation.—O'Callaghan's "History of New Netherland," vol. II, 338.



who took office on Manhattan Island in 1626, as the first Director-General of New Netherland, did not mind enlisting in like capacity in the service of Sweden, in 1638, and had no qualms in purchasing from the Indians for the Queen of Sweden title to land which he must have known was within the recognized limits of New Netherland.<sup>2</sup> He built a fort on the site of the present city of Wilmington, Delaware, within sixteen miles of a Dutch fort; and to the protesting Dutch governor he replied: "The Queen of Sweden has as good a right to build a fort here as the Dutch West India Company." Apparently, the national spirit was not as strong then as now. The struggles of one royal house against another; the rapidity with which governments changed; the almost chronic state of war in Europe, a scourge which descended heaviest upon the backs of the common people; the hardships and insecurity of life and home which followed change in ecclesiastical polity; and many other movements in which the people were the unfortunate pawns, vital in the combat but impotent to control its action, must have dulled the national spirit very generally among the masses in Europe. The legions of Spain were recruited mainly from mercenary adventurers of many nations, among men who would fight and sack for any power so long as pay and loot were regularly forthcoming; royal forces were constantly see-sawing through French, German, and Austrian countries, making the lot of the peasant indescribably miserable; and even in England, where some semblance of personal independence existed, the common people had had good reason to doubt their power in the House of Commons, and had begun to more than murmur against the actions of their headstrong king. Indeed, of all European peoples of that time, it seems quite possible that the national spirit was strongest in the

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2. He landed at the site of Newcastle in April, 1638, and purchased from the Indians the whole territory from Cape Henlopen to the falls of the Delaware River at Trenton, without the slightest regard to the claims of the Dutch.—Lossing's "Our Country."

Dutch. Their great hero, William the Silent, would have stirred it in them; and they could not have endured the eighty years of bitter struggle for independence, had not a stern nationalism been developed in them.<sup>3</sup> The state of the Walloons, the people who were the first to settle in New Netherland, was less encouraging, however. In the first decades of the seventeenth century, they surely must have looked upon themselves as altogether without a country. The Walloons spoke the French tongue, but they belonged to the Low Countries, to the northern, or Belgic, provinces of the Netherlands. These, however, had not joined with the southern provinces when the United Netherlands had been formed in 1597, and their political status was different. Religious toleration was denied them, and, as Protestants, they had been driven from their home provinces by the lash of persecution in the hands of the Spaniards. They had crossed into Holland in thousands, Amsterdam and Leyden receiving very many of these Walloon refugees. There, they had become friendly with the English refugees, listening with interest to all that the English told them of the new land across the sea. The Walloons would have gladly emigrated to the English colony of Virginia, had the London Company met their inquiries with favorable terms of settlement; hence, it may be inferred that financial advantage rather than national affinity was the factor which drew the Walloons to New Netherland instead of to Virginia. That the Dutch trading

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3. Too high praise cannot be given to those brave and industrious people who redeemed their morasses from the sea, who grew rich and powerful without the natural advantages of soil and climate, who fought for eighty years against the whole power of Spain, who nobly secured their independence against overwhelming forces, who increased steadily in population and wealth when obliged to open their dikes upon their cultivated fields, who established universities and institutions of learning when almost driven to despair, and who became the richest people in Europe, whitening the ocean with their ships, establishing banks and colonies, creating a new style of painting, and teaching immortal lessons in government when they occupied a country but little larger than Wales. Civilization is as proud of such a country as Holland is of Greece itself.—Dr. John Lord in "American Founders"; vol. xi-29, "Beacon Lights of History."



company permitted them to settle in the land they governed may be attributed to like reasons.

The West India Company was not able to complete its organization immediately; indeed, almost two years were destined to elapse before the corporation could take final form. During this period, matters of urgent importance were dealt with by a temporary organization. The vital question of land-title came before them for early consideration. The situation certainly was beclouded. It was evident that the region of the English corporation, the Plymouth Company, chartered in 1620, overlapped that of the Dutch West India Company. During 1620, the States-General probably had confidently hoped that the vehement opposition by the English Parliament would defeat the plan of the English king to grant the Plymouth charter, which the House of Commons had denounced as outrageous, in fact as the "delegation of despotic power to a grasping company of traders." But the Dutch Government soon knew that King James was stronger than Parliament. Another ominous aspect lay in the certainty that the French looked upon the activities of both the English and the Dutch in America as encroachments upon their rightful colonial domain; the English king had been tendered the remonstrances of France, through their ambassador, against the Plymouth Company's patent; and the Dutch in Manhattan had not been left ignorant of the contention of the French, for a French expedition had appeared off Manhattan Island, a landing had been made, and possession of the land had been formally taken by the French commander, in the name of the king of France. During the previous decade, the Dutch traders had been bent on trade rather than ceremony, but in view of this French action, it perhaps occurred to the Dutch Company that some such ceremony by their own agents might strengthen their title. But they probably viewed the English claim with more concern, though it seems that the States-General had taken as

little heed of the English king's intimation to them, "that Dutchmen were unlawfully seated upon the domain of a chartered English company," as the English king had taken of expostulations by his own Parliament and remonstrances by the French ambassador. The Dutch Government perhaps felt that, as the truce with Spain was at an end and the Thirty Years' War was well under way, the time had come for action not compromise. Their title to New Netherland was clear in one respect; they were actually in possession of the region to which they meant to hold tenaciously; and they contended that this priority of occupation did not conflict with the Plymouth Company's occupation of land further north and that it constituted a weightier title than that which rested on discovery. So, at the suggestion of the States-General possibly, the Dutch Company went ahead, sending agents early in 1622 to New Netherland, with instructions to its officers at Manhattan and on the North River (by which name the Hudson was known, the Delaware River being called the South River) to go through the procedure of formally taking possession of the country. They were instructed to complete the fortifications and give other visible evidences that the Dutch were actually in possession.

To make surer their title to the region, the Dutch Company thought of extinguishing the Indian title by purchase. They also recognized that they could give their occupation of New Netherland a more legitimate or permanent aspect by encouraging settlement therein of agriculturists.

So it was that the Dutch West India Company so early in its existence was called upon to add permanent colonization to its trading plans. At this psychological moment, the executives of the company, the Board of Nineteen, received word from the States-General of the endeavor of some Walloons to emigrate to Virginia. The Dutch West India Company gladly approached the Walloons and soon agreed upon terms to set-



tlement in New Netherland.<sup>4</sup> Accordingly, several families of Walloons made preparations to sail in the spring of 1623.<sup>5</sup> In this way the company was early enabled to conform with one of the conditions of its charter, that which required them to "advance the peopling of those fruitful and unsettled parts."

By the month of May, 1623, the West India Company had completed its internal organization; and the articles of internal regulation were approved by the States-General on June 21, 1623. The subscription books were then closed, and the permanent organization began to function. Of the five directing chambers, the Amsterdam Chamber was the strongest, having subscribed about one-half of the capital stock; therefore, to it was given, by the Board of Nineteen, the exclusive

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4. It appears that the Walloon refugees in Leyden and Amsterdam had much to do with the organization of the West India Company. The "History of Long Island" (1925) gives the following on the subject:

"Among them was a leader equal to the opportunity. William Usselinx was a traveler and a man of parts. He had visited the Azores, recently colonized by the Netherlanders, and become familiar with the 'mystery' of Spanish success in colonization. The Azores were the clearing house for ships bound for America. A straight line was drawn across the map, as with a rule, from the Azores to Sandy Hook. He returned to the Netherlands and began to talk about promoting Dutch trade with America. Following his intense activity by speech, by pamphlets and by publicity of all kinds, the Dutch West India Company was formed in 1621. . . .

". . . . The Walloon refugees were alert to the opportunity thus offered. They furnished a large part of the capital, as did the Flemish refugees in Holland. They furnished many leaders of renown. In the history of New Netherland the Belgians are confounded with the Dutch, for they lived in Holland at the time of their embarkation. Names like Hoboken and Hellgate are taken from places near Antwerp. Isaac de Rasieres, the first secretary of the colony, was a Belgian, and so was Jean Mousnier de la Montagne, son-in-law of Jesse de Forest."—"History of Long Island" (1925), pp. 46-47.

5. About the time the Company received its charter, Jesse de Forest, a native of Avesnes in the province of Hainault, was a refugee at Leyden. He assembled a company of French-speaking Walloons, mostly emigres from his native town and province, and asked the British Government for land "in Virginia" for fifty-six Walloon families. King James I, in 1621, refused to grant it. Another petition of August 22, 1622, was allowed by the States-General. De Forest embarked the first colonists aboard the ship "New Netherland" and set sail in March, 1623. He was the ancestor of the De Forests in America, and of the noted lawyer and philanthropist, Robert W. de Forest of New York.—Ibid, p. 47.

management of the affairs of the province of New Netherland, subject of course to the constitutional restrictions. Brodhead names, among the prominent members of the Amsterdam Chamber: Jonas Witsen, Hendrick Hamel, Samuel Godyn, John de Laet, Killian van Rensselaer, Michael Pauw, and Peter Evertsen Hulft. These are names that come prominently into the early records of European occupation of New York, New Jersey, Delaware, Pennsylvania, and Connecticut.







## CHAPTER VI.

### THE COMING OF THE WALLOONS.\*

During the winter of 1622-23 the Walloons prepared for their great adventure across the seas. And the managers of the West India Company busied themselves with plans to transport them thither. A vessel of two hundred and sixty tons burthen was fitted out; it was christened "New Netherland"; and command of it was given to Cornelis Jacobsen May, of Hoorn, who had had long experience as a navigator in American waters. Captain May was also to remain in New Netherland, as the first director, or governor, of the colony.

Upon the good ship "New Netherland," therefore, early in March, 1623, thirty families, comprising one hundred and ten men, women and children, embarked. Into the ship had also been put "agricultural implements, cows, horses, sheep and swine, and a sufficient quantity of household furniture," so that the colonists might begin their experiment with some degree of comfort, and a chance to succeed. The ship sailed from Texel early in the month, and the course was set by the longer but safer southern route, by way of the Canaries and the West Indies; hence it was not until the month of May that the "New Netherland" sailed into New York waters.

Their coming was opportunely timed, for at that moment the Dutch traders on Manhattan Island were considering what measures would be necessary to rid themselves of another vessel that rode at anchor in the Bay, and kept constantly before them the French claim to the territory. But

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\*AUTHORITIES—Green's "A Short History of the English People"; Lossing's "Our Country"; "Encyclopedia Britannica"; O'Callaghan's "Documentary History of the State of New York"; "Civil List, State of New York," 1888; Daly in "State of Jurisprudence During the Dutch Period," 1623-74; "History of the Bench and Bar of New York" (1897); Chester, in his articles Albany County, Vol. III, "Legal and Judicial History of New York" (1911); O'Callaghan's "History of New Netherland."



the problem was not now difficult. Two pieces of cannon taken from the fort at Manhattan and mounted by the Dutch on the yacht "Mackerel," together with the presence of Captain May's vessel, with its one hundred and ten colonists, were sufficient indications to the French commander that he could not enforce his claim; and he discreetly permitted the yacht "Mackerel" to escort his vessel out of New York waters. Thus ended all serious attempts of the French to assert jurisdiction below the forty-fifth parallel, at least on the Atlantic seacoast. After making a final protest to the Dutch traders on the Delaware, the Frenchman sailed for home.

"On a beautiful morning in May, the Walloons landed from the 'New Netherland,' in small boats, upon the rocky shore where Castle Garden now is," wrote Lossing, in 1877. "They made a picturesque appearance as they ascended the bank in their quaint costume, every man carrying some article of domestic use, and many women, each carrying a babe or small child in her arms. They were cordially welcomed by the resident traders and friendly Indians, and were feasted under a tent of sails stretched between several trees. Under that tent a Christian teacher, who accompanied the settlers, offered up fervent thanksgivings to Almighty God for his preserving care during the long voyage, and implored His blessing upon the great undertaking before them. May then read his commission, which made him first director of New Netherland, and formally assumed the governorship of the colony and country."

Following the definite basic purpose of the Dutch West India Company in encouraging colonization, Director May distributed the settlers over as much territory as possible, so that Holland might thus the better answer, by actual occupation, the claim of King James for the Plymouth Company, which claim was also based on occupancy. Some of the Walloons settled on Manhattan; some settled on Long

Island, where the city of Brooklyn eventually grew; some went up the Fresh River, later known as the Connecticut River, and built the Fort Good Hope near the site of the present city of Hartford; some established themselves in what became Ulster County, of New York; one group went up the North River and, in 1624, erected Fort Orange "on the shore of the river, near the site of the present steamboat landing" at Albany. Others, it is said, went to the Delaware, "and began a settlement at the mouth of Timber Creek, on the east side of the river, a few miles below the site of Philadelphia, and built a small fortification which they named Fort Nassau,<sup>1</sup> the first settlement in New Jersey."

Thus established by permanent settlements, the Trading Company was able to reach out for trade in all directions contiguous or near thereto. "They even went as far as Narragansett and Cape Cod bays in search of the beaver and otter." Wherever the Dutch West India Company settled Walloons their agents formally took possession of the land in the name of the Company, and of the States General of the United Netherlands. This formal possession was deemed to embrace all the lands drained by the rivers on which they were settled, which waterways were, of course, their trade routes. Captain May was only Director of New Netherland for one year, and his lieutenant, Adriaen Joris, returned to Amsterdam in the ship in which the Walloons had come. But the report Joris made, that the settlers were "getting bravely along," and the evidence he brought, in his \$10,000 cargo of peltries, that the future of the Company and of the Dutch in the American enterprise was bright, so raised the hopes of the Company that they soon made plans to ship more emigrants, and also live stock, implements, and seed for the expansion of the agricultural phase of their activities.

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1. The settlers engaged in this enterprise, it is said, were four young couples who were married on shipboard, and eight seamen who managed a little yacht that conveyed them to the South River, as the Delaware was called.—Lossing's "Our Country," vol. I-221.



Director May was succeeded, as such, by William Verhulst in 1624; but it is doubtful whether either exercised any degree of magisterial control over the colonists during the short period (1623-25) in which they were in charge of the affairs of the Company in the settlements. They probably were not expected to do more than see that the trading interests of the Company were properly safeguarded, and take such measures as were necessary for business expansion. To them, perhaps, colonization meant only "overhead expense," and as such could expect but little executive provision in the initial stages. For that matter the colonists were in such small groups that the paternal authority of heads of families was perhaps considered all that was called for. But the colony grew during the first years; and the political situation for the Dutch in the homeland changed very considerably during the period; so much so, indeed, that the States General and the commercial corporation were able to grasp the opportunity that presented itself of more thoroughly establishing Dutch claims to the American domain.



## CHAPTER VII. THE DUTCH LEGAL SYSTEM.\*

By the supreme efforts, the heroic struggles, and the genius of William the Silent, Holland, i. e., the United Provinces of the Netherlands, had risen to be a great Protestant power. Maurice of Nassau had further strengthened Holland. Although despotic and willing to use the Protestant power to meet his own political ends, Maurice was a skillful soldier, and he had fought the Spaniards to a standstill, in the defence of Holland. During the twelve years' truce, Maurice had not had harmonious relations with the States General; he had headed the Anti-Remonstrants and driven the Remonstrants out of the Netherlands into Denmark, had defeated the popular will, and had established a government which while not monarchical, yet recognized no people.<sup>1</sup> But,

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\*AUTHORITIES—Ex-Chief Justice Daly, on the "State of Jurisprudence During the Dutch Period," 1623-74; "History of the Bench and Bar of New York"; O'Callaghan's "History of New Netherland"; Brodhead's "History of New York"; Van Leeuwen's "Commentaries on Roman Law"; Wassenaer, in "The Documentary History of the State of New York," Edition of 1850; O'Callaghan's "Documentary History of the State of New York"; Dougherty's "Constitutional History of New York State"; Chester's "Legal and Judicial History of New York"; Green's "Short History of the English People"; Scott's "Courts of the State of New York"; "Encyclopedia Britannica"; Sir William Temple's "Observations Upon the United Provinces of the Netherlands"; Lossing's "Our Country"; Werner's "Civil List and Constitutional History of the Colony and State of New York," 1888; Pennsylvania Archives, Second Series.

1. The Charter of the West India Company was issued in 1621. The Thirty Years' War had commenced. . . . Barneveldt was dead; Grotius was hiding away from the despotism of Maurice. There was not a country in which popular rights were respected, and popular power could be expressed and enforced in orderly methods. Just then the western gate was opened.—Werner in the "New York Civil List" (1888), p. 20.

1. For nearly forty years Catholic and Protestant had been imbruing their hands in each other's blood. Now the Protestants turned upon each other. The Calvinists and the Arminians succeeded in dividing the people of Holland into two parties, between which the strife raged with the same ferocity which had rent the country for nearly a half century. Prince Maurice himself appeared as a fomenter of this discord; for he hoped



when the truce was ended in 1621 and Holland was again at war with Spain, Maurice was the great commander, and for long foiled the attempts of Spain to penetrate far into the Netherlands. Maurice of Nassau was one of the defenders of Protestantism, though he may not have been himself staunch in the faith. On the other hand, James the First of England, although he headed a nation that was stalwartly Protestant, sought to ally himself with the great Catholic power, Spain, at the outbreaking of the Thirty Years' War. In 1621, the year in which the armistice between Spain and the Netherlands ended, James had dissolved his Parliament, tearing out of the House Journals the pages that recorded Parliament's action in presuming, indeed asserting its right, to instruct the King on matters of foreign policy;<sup>2</sup> he had per-

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thereby to rise to the absolute sovereignty of the Netherlands. He took his stand at the head of the Calvinist party and was opposed by the two distinguished patriots, Olden Barneveldt and Hugo Grotius. Never did two leaders deserve better of the people whom they sought to serve. Those whom they led were known by the name of *Remonstrants*, while the followers of Maurice were known as the Anti-Remonstrants—two names which are still used the party jargon of Holland. At length the Remonstrants were put down. The venerable Barneveldt, then seventy-one years of age, was . . . executed on the 13th of May, 1619. Grotius was condemned to imprisonment for life. Ridpath's "History of the World." (Grotius had dared to advance "the monstrous doctrine that the high seas were not the property of any king, but free to the ships of all nations." He escaped to France in 1621, and later wrote his celebrated *De Bello et Pace*, "Treatise on War and Peace," a work so thoroughly profound and exhaustive as to become, and ever remain, the foundation of the Law of Nations).

2. In their petition the Houses coupled with their demands for war the demand of a Protestant marriage for their future King. Experience proved in later years how perilous it was for English freedom that the heir to the Crown should be brought up under a Catholic mother; but James was beside himself at their presumption in dealing with mysteries of state. "Bring stools for the Ambassadors," he cried in bitter irony as their committee appeared before him. He refused the petition, forbade any further discussion of state policy, and threatened the speakers with the Tower. "Let us resort to our prayers," a member said calmly as the King's letter was read, "and then consider of this great business." . . . It resolved: "That the liberties, franchises, privileges, and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the King, state and defence of the realm, and of the Church of England, and the



mitted the Catholic League forces to overrun the Palatinate, and drive the Elector to Holland, notwithstanding that his own daughter, Elizabeth, was wife of the Elector, and despite the warlike attitude of his own Parliament, which, by a unanimous vote, "lifting their hats as high as they could hold them," had declared that "for the recovery of the Palatinate they would adventure their fortunes, their estates, and their lives."<sup>3</sup> King James had gone further in reaching out for a Catholic alliance; he had sent his own son, Charles, to Spain to espouse the Infanta. As to James the First's direct opposition to Holland, his hostility was evident when he chartered the Dutch West India Company's rival, the Plymouth Company, and warned the Dutch off the American domain of England. Altogether, the political situation for the United Provinces of the Netherlands was ominous at the time the West India Company began to operate.

A few years of that chaotic period, however, materially changed the complexion of affairs. King James had even been forced into alliance with the Netherlands. His son, Charles, had left the Spanish Court without the Infanta, much to the joy of the people of England; and Charles had forced his father to call a Parliament, and leave state affairs largely in the hands of the Duke of Buckingham and himself. In

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making and maintenance of laws, and redress of grievances, which daily happen within this realm, are proper subjects and matter of council and debate in Parliament. And that in the handling and proceeding of those businesses every member of the House hath, and of right ought to have, freedom of speech to propound, treat, reason and bring to conclusion the same."

The King answered the Protestation by a characteristic outrage. He sent for the Journals of the House, and with his own hand tore out the pages which contained it. "I will govern," he said, "according to the common weal, but not according to the common will." A few days later he dissolved the Parliament. "It is the best thing that has happened in the interests of Spain and of the Catholic religion since Luther began preaching," wrote the Count of Gondomar.—Green's "History of the English People," vol ii-179.

3. Ibid, vol ii, 178.



the next Parliament, Sir Edward Coke,<sup>4</sup> who had been imprisoned by King James—as one of the chief instigators of the entry in the House Journals of the resolutions, in 1621, which had so incensed the king—was again outspoken in opposition of the king's will. From the Speaker's chair, he fearlessly opposed the authority of the Plymouth Company in America, arguing, as he had in the previous Parliament, that as the charter was granted without regard to preëxisting rights, it was necessarily void. To Gorges he said: "Your patent contains many particulars contrary to the laws and privileges of the subject; it is a monopoly, and the ends of private gain are concealed under color of planting a colony."

So the Dutch situation, as to the New Netherlands province, was strengthening. And, with the ascension of Charles to the throne of England in 1625, the chances became even better. Charles, with his eyes on the more vital European problem, seemed disposed to let the Dutch roam where they would in America. In fact, King Charles, promised non-interference in New Netherland. With this brightening prospect, the States General had been gradually devising methods of more regular governmental administration of the new land.

Through its agent, the Dutch West India Company, the States General began measures to introduce the principles of the Dutch legal and civil systems of government in the colony.<sup>5</sup> The office of Director-General was constituted, and

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4. He was one of the most prominent of the constitutional party. It was he who proposed a remonstrance against the growth of Popery, and the marriage of Prince Charles to the Infanta of Spain, and who led the Commons in the decisive step of entering on the journal of the House the famous petition of December 18th, 1621, insisting on the freedom of parliamentary discussion, and the liberty of speech of every individual member.—"Encyclopedia Britannica."

5. The Dutch, while not giving to the people the exclusive choice of their rulers, kept the feudal system within its legitimate sphere, and limited it to the ideal. The feudal ideal, politically was the law of service, written in Roman jurisprudence and realized in the Christian life. Its fatal weakness was that it was powerless to protect the people against despotic kings, princes and judges. . . .



New Netherland became a county of Holland, in due course receiving the armorial distinction of a count. Peter Minuit was commissioned as first Director-General, and sailed from Amsterdam on December 19, 1625, in the vessel "Het Meetje." In the ship also, it is said, were more emigrants. Upon arrival at Manhattan in May, 1626, Director-General Minuit set the new plan of government in operation. He was to be advised by a Council of five, "who, with himself, were in-

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By its terms (the charter of the Dutch West India Company) the will of the company was supreme, and all power was vested in the Director-General and Council, who were to be governed by the Dutch Roman law, the imperial statutes of Charles V., and the edicts, resolutions, and customs of the United Netherlands. . . . This shows the genesis of Dutch government. The basis of it all was the customs of the fathers. The superstructure was a union of the Roman, German, and Dutch municipal systems. The Dutch were governed by a league of commercial guilds, represented in the States-General in order that they might protect the organized interests of each class of people; not that they might invade the rights of others. This principle of conserving the ancient and vested rights of all the people as against any portion thereof, even a majority, and as against government itself, was the foundation principle of the province as of the mother country, and distinguished it in the beginning from either of the English colonies. . . .

In the last analysis, the English system gave the government absolute power over all subjects. Whoever controlled the government worked their sovereign pleasure with all people, whether such control was held by Crown or Parliament. . . . The Dutch system, while holding the elements of feudal liability to tyranny, held them in strict subservience to Law, and guarded against abuses by conferring no power without accompanying it with an adequate safeguard against its arbitrary exercise. In England it was either the Crown or Parliament making laws at their own pleasure; in the Netherlands, government was a commercial agent, while the laws and customs of the fathers were administered and justice secured by magistrates nominated by the people. While the Dutch form was feudal, its spirit was municipal. . . . The Dutch gave the New Netherland in feudal shell, a paternal guardianship of liberty regulated by law. . . .

The English parliamentary system vested supreme power in the legislative majority. The Virginia system placed the Legislature under the control of a Royal master. The New England system (except in the Plymouth Colony) rendered the Church supreme. . . . The Dutch made the judiciary supreme, and denied all arbitrary power, either in people or parliaments, in civil rulers or religious teachers, and sought to fortify the people against its exercise. Thus the feudal shell of Dutch government inclosed the seed of liberty, ready in fullness of time to germinate in most perfect form.—Werner, in "Civil List and Constitutional History of the Colony and State of New York, 1888, pp. 22-26.



vested with all legislative, executive and judicial powers, subject to the supervision and appellate jurisdiction of the Chamber at Amsterdam.”<sup>6</sup> This council had jurisdiction in all criminal cases to the extent of fine, but each capital offender “must be sent, with his sentence to Holland.”<sup>7</sup> Next in authority to the Director-General and Council was the *koopman*, the keeper of the accounts of the trading company. In office, he was to all intents the secretary of the province, and “appears to have been the person best educated for the proper performance of his particular functions.” He was to all intents the commercial expert, the skilled executive, of the province, giving the Governor and Council the benefit of his advice in the functioning of the executive departments much as another important official, the *schout-fiscal*,<sup>8</sup> the oracle of all legal processes, did in matters of law. The *schout-fiscal* comprised in himself very many offices; he had the responsibilities of an attorney-general, a prosecuting attorney, an advocate or counsellor, a constable or sheriff, an excise officer, a clerk of the courts, and was also almost a stevedore.<sup>9</sup>

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6. The director-general and his council were invested with all powers, judicial, legislative and executive, subject, some supposed, to appeal to Holland; but the will of the company, expressed in their instructions, or declared in their marine or military ordinances, was to be the law of New Netherland, excepting in cases not especially provided for when the Roman Law, the imperial statutes of Charles V, the edicts, resolutions and customs of Fatherland, were to be received as the paramount rule of action.—O’Callaghan’s “History of New Netherland,” vol. I, p. 90.

7. The Council there administered Justice in criminal matters, as far as imposing fines (*boet-straffe*), but not as far as capital punishment. Should it happen that any one deserve that, he must be sent to Holland with his sentence.—Wassenaer, in “The Documentary History of the State of New York,” Edition of 1850, vol. ii, p. 43; also Chester’s “Legal and Judicial History of New York.”

8. In every tribunal there is a *schout* or sheriff, who convenes the judges and demands from them justice for the litigating parties; for the word “schout” is derived from *schuld*, debt, and he is so denominated because he is the person who recovers or demands common debts, according to Grotius. The right of the sovereign in criminal cases is sustained before the court by the advocate *fiscal* or attorney-general.—Van Leeuwen’s “Commentaries on Roman Law.”

9. He is charged specially with enforcing and maintaining the placards, ordinances, resolutions and military regulations, of the High Mightinesses



He was the encyclopedia of jurisprudence, was privileged to sit in the Council and, when asked, give his opinion on matters of finance, justice, or police, although he had no voting power in that body. His responsibilities were so many and so vital that his person was hedged around almost like that of a judge; as the Guardian of the Law, special care was taken that nothing should hinder the impartiality of the schout-fiscal's recommendations and acts.<sup>10</sup> At least such was the letter of the law, the spirit of the regulations ordered by the States General and the West India Company for the governance of the colony. In actual practice, however, the schout-fiscal does not seem to have had so much legal dignity. Under Van Twiller, the schout who had been so unfortunate

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the States General, and protecting the rights domains and jurisdiction of the company, and executing their orders as well in as out of court, without favor or respect to individuals; he was bound to superintend all prosecutions and suits, but could not undertake any action on behalf of the company, except by order of the council; nor arraign or arrest any person upon a criminal charge, unless upon information previously received or unless he caught him *in flagrante delicto*. In taking information he was bound to note as well those points which made for the person, as those which supported the charge against him, and after trial he was to see to the proper and faithful execution of the sentence, pronounced by the judges, who, in indictments carrying with them loss of life and property, were not to be less than five in number. He was moreover specially obliged to attend to the commissions arriving from the company's outposts, and to vessels arriving from, or leaving for, Holland, to inspect their papers, and superintending the loading and discharging of their cargoes, so that smuggling might be prevented; and all goods introduced, except in accordance with the company's regulations, were at once to be confiscated. He was to transmit to the directors in Holland copies of all informations taken by him, as well as of all sentences pronounced by the court, and no person was to be kept long in prison at the expense of the company, without special cause, but all were to be prosecuted as expeditiously as possible before the Director and council.—O'Callaghan's "History of New Netherland."

10. He was strictly forbidden to accept presents or gifts from any person whatsoever, and had to content himself with the civil fines and penalties adjudged to him, and such part of the criminal fines and confiscated wages of the company's servants as the director and council, after prosecution, might allow. He was not to have any part, however, of captured prizes or confiscated goods.—Daly, in "State of Jurisprudence During the Dutch Period," 1623-1674; "History of Bench and Bar of New York."



as to oppose his regular conduct was condemned by Van Twiller "to lose his wages, then three years in arrears." Under Van Stuyvesant, the schout-fiscal was little more than a scrivener, employed by the Director-General to copy legal papers, which the Governor himself usually drafted. On another occasion Schout Van Dyck was "charged to look after the pigs, and keep them out of the fort, a duty which a negro could very well perform." If he presumed to disobey, the Director-General "put him in confinement, or bastinadoed him with his rattan," states an entry in "Pennsylvania Archives," Second Series, Vol. II, p. 181. Still, the first schouts-fiscal of New Netherland were perhaps accorded a status more in keeping with their legitimate office. The first schout-fiscal was Jan Lampo, who was succeeded in 1631 by Coenraed Notelman. Isaac de Rasieres was the first *koopman*; his successor was Jan van Remund.

For more than a decade this system of government was in effect in New Netherland. Minuit was Director-General for six years, losing office, it is said, because of certain objectionable features of his association with the patroons. But during his administration there was noticeable expansion of the commercial affairs of the colony. The members of his Council were Peter Bylvelt, Jacobs Elbertsen Wissinck, Jan Janzzen Brouwer, Simon Dircksen Pos and Reynert Harmenssen; and one of his first acts was to open negotiations with the Indians for the purchase of the Indian right to Manhattan Island. He extinguished the Indian title to about 22,000 acres of land, confirming it to the West India Company, for the sum of about twenty-four dollars. The new fortifications begun by Engineer Frederic at the "Battery" were christened Fort Manhattan, and the village became New Amsterdam.

While the relations with the Indians, with one or two regrettable exceptions, were uniformly amicable and trading

was good, the colonization did not expand under Minuit as rapidly as had been hoped by the Company. Minuit had endeavored to cultivate friendly relations with the Pilgrims at New Plymouth; in the spring of 1627 his secretary, Isaac de Rasieres, had written to Governor Bradford, "officially informing him of the founding of a settlement and province on the Mauritius or Hudson's River, and assuring him that the Hollanders wished to cultivate friendly and commercial relations with the Pilgrims." In reply Bradford had professed a desire that friendly intercourse should be established, but warned the Dutch to keep within the fortieth degree of latitude, though, in the face of Minuit's retort that the Dutch had a right to trade with the Narragansetts and would do so, Bradford felt himself powerless to enforce his demand. "For strength of men and fortification," he wrote to the Council of New England, "they far excel us and all in this land." Minuit, of course, was aware of this. Nevertheless, he wished to cultivate neighborly feelings between the two European colonies. He even offered, in fact urged, the Pilgrims to leave their "sterile soil" and settle in the "beautiful and fertile country on the banks of the Fresh-Water (Connecticut) River," under the jurisdiction of New Netherland. Such a status, of course, the Englishmen would not suffer, although they profited by Minuit's advice and later ousted the Dutch from the Connecticut valley altogether.

During Minuit's administration, however, the Dutch were supreme, or predominant. But the colonial expansion was not rapid enough to satisfy the homeland. And soon the Board of Nineteen of the Dutch West India Company devised another means of encouraging emigration. This was given authority in the Charter of Freedoms and Exemptions granted on June 7, 1629. It introduced the patroons, with the manorial system of local government, a feudal system which developed, in at least one important instance almost indepen-



dent sovereignty, the quasi-independent colony of Rensselaerswyck indeed coming into actual armed conflict with the forces of the Director-General. To what extent this landed aristocracy interfered with the authority of the first three directors-general, Minuit, Krol and Van Twiller (1626-37), is not positively known, the records of the West India Company having been lost.<sup>11</sup> Neither is it possible to state, confidently, how judicial proceedings were conducted under Minuit, Krol or Van Twiller, but it would seem that with the coming of the patroons the judicial labors of Governor and Council were lessened. Obviously, the authority of the Governor was affected by the fact that several of the patroons were directors of the Council of Amsterdam, *e. g.*, were his overlords.<sup>12</sup> Still, it was perhaps well to curb pretensions of arbitrary power by the governor, for out of such "uncongenial beginnings a degree of popular government was evolved,"<sup>13</sup> eventually.

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11. Mr. Brodhead, who went to Holland in 1841, to gather data *re* New York colonial history, found that the archives of the Dutch West India Company had been sold but a few years before his arrival, for waste paper. "He was able to rescue some fragments, but the amount obtained was very trifling."—Chief Justice Daly, in "State of Jurisprudence During the Dutch Period," 1623-1674.

12. In 1629 the Board of Nineteen adopted a charter of privileges for intending settlers, which was fatal to the interests of the company, for on its adoption there was a general scramble for the best lands in the province, in which the directors and members of the corporation took part as individuals and not as members of the body. Immense tracts of land were acquired by different parties. . . . The internal administration of the New Netherland colony was exceedingly bad. In 1632, to heal the breaches which internecine dissension had caused, Minuit was deposed.—"Encyclopedia Britannica," on The United States.

13. The director, as the governor was styled, seemed in practice as absolute and uncontrolled in his jurisdiction as was Warren Hastings in the succeeding century in India; the one had for his subjects colonists from Holland, the other ruled numerous tribes of an alien race. The Dutch director extinguished Indian titles or sanctioned their purchase. His ratification was essential to the validity of every contract; he created the courts, appointed nearly all public officials; enacted laws and ordinances as a Roman emperor, issued edicts, incorporated towns, imposed taxes, levied fines, and inflicted penalties. He possessed a power almost as extensive over the currency of the colony as did Philip the Fair over that of France. He determined the value of the wampum, the chief money of the time. No jury aided him in the decision of criminal or civil causes; he deter-

mined these himself. While his commission usually required him to recognize the cognate jurisdiction of what was termed the Council, he habitually ignored this body as a restraint upon his plenary authority. Yet, in spite of these uncongenial beginnings, a degree of popular government was evolved. . . . Men nurtured in the independent air of Holland could not be expected long to brook tyrannical government. Their situation in a new country, surrounded by wild tribes of the forest, amidst novel experiences and sudden dangers which compelled the director frequently to consult with the chiefs of the people, was especially conducive to the development of independence.—Dougherty, in "Legal and Judicial History of New York" (Chester, 1911).







## CHAPTER VIII.

### THE PATROONS AND THEIR COURTS.\*

Holland had been struggling for fifty years under a republican skeleton of government in which the democratic principle was occasionally manifested—faintly, perhaps, but still with sufficient strength to slowly undermine or change the feudal system. As the decades of that half-century had passed, the levelling of the classes had slowly proceeded. There was a vital reason for this, one that had nothing to do with platitudes or theories of brotherly love. In the common danger of invasion of their hollow land by the sea, all classes had necessarily to be of one purpose; in the struggle for existence, there was no option; all must work or drown. So, “the nobles who composed the landlord class gradually came down from the stilts of exclusiveness, and in habits and even costume imitated the working people.”<sup>1</sup> The feudal system of manorial lord and armed retainers had, in Holland, become more that of working estate-owner and willing laborers, all classes combining in constructive work. It was this spirit of coöperation, perhaps, which the States General

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\*AUTHORITIES—O’Callaghan’s “History of New Netherland”; Scott’s “Courts of the State of New York”; Southey’s “History of Brazil”; the Van Rensselaer “Bowier Manuscripts”; “Documents Relative to the Colonial History of the State of New York”; Lord’s “American Founders, in Beacon Lights of History”; Ridpath’s “History of the World”; Taylor’s “Origin and Growth of the English Constitution”; Chester’s “Legal and Judicial History of New York”; “Documentary History of the State of New York,” ed. 1850; “Civil List and Constitutional History of the Colony and State of New York,” ed. 1888; Lossing’s “Our Country”; Lincoln’s “Constitutional History of New York”; Van Laer’s translation of the “Minutes of the Court of Rensselaerswyck,” 1648-1652.

1. When industry was made honorable in Holland the feudal system began to decay. It was a system embracing large landowners, whose tenants were military men who controlled all labor and bore allegiance to the lordly proprietor. In the new era which had gradually dawned in Holland, the owner of the soil was no longer the head of a band of armed depredators who were his dependents, but the careful proprietor of broad



and the West India Company thought might be introduced in the colonies with advantage. They needed settlers in New Netherland. But emigrants drawn from the peasant class were too poor, and might, in the difficulties of the new land, become dependent upon the Company. For successful colonization, capital was necessary, as well as labor. And, in the Charter of "Privileges, Freedoms and Exemptions to all patrons, masters or individuals who should plant any colonies and cattle in New Netherland," which the West India Company published in 1629, the Company perhaps saw the solution of their problem, enabling them to develop their colony at the expense of others. The West India Company was, nevertheless, exceedingly prosperous just then. In 1628, its ships captured the Spanish silver fleet, with profit to the Company of \$15,000,000. In 1629, about \$8,000,000 in prizes were added to the Company's wealth by privateers. Still, it was quite willing to let others handle the more prosaic enterprise of developing New Netherland. Hence the patroonship plan.

A somewhat similar system had been successful in Spanish and Portuguese possessions.<sup>2</sup> Hereditary captaincies, granting court favorites privileges somewhat like those of the proposed Dutch patroonships, had succeeded in Madeira and the Azores, and possibly South America. In one part of

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acres, and devoted to industry and thrift. The nobles who composed the landlord class gradually came down from the stilts of exclusiveness, and in habits and even costume imitated the working people. The latter became elevated in the social scale. Their rights were respected and their value in the state was duly estimated. Ceaseless toil in Holland was necessary to preserve the hollow land from the invasion of the sea, and the common needs assimilated all classed in a country where all must work or drown.—Lossing's "Our Country," Vol I, 267.

2. It had then become of sufficient importance to obtain some consideration at court, and in order to forward its colonization, the same plan was adopted which had succeeded so well in Madeira and the Azores, that of dividing it into hereditary captaincies, and granting them to such persons as were willing to embark adequate means in the adventure, with powers of jurisdiction, both civil and criminal, so extensive as to be in fact unlimited.—"History of Brazil," by Robert Southey, Vol. I, 41.

South America the Dutch perhaps had had to feel the force of a manorial system which could readily be converted into a military system; the West India Company had attempted to gain a foothold in Brazil five or six years earlier, at the expense of the Portuguese, but had failed, being expelled from Bahia in 1625. However, another Brazilian campaign was being planned at the time the West India Company devised the new system of patroonships for New Netherland. In 1629, they attacked and took Pernambuco. In 1630 Count Maurice of Nassau, there set up "a regular government" by means of which the Dutch gained possession of all Brazil north of Pernambuco, except Para, holding the region for thirty years.

So, maybe, the measure passed by the Dutch West India Company, with the approbation of the States General, in 1629, in offering the Privileges, Freedoms and Exemptions which would establish a new system of local government and minor courts under patroons in New Netherland was not devised to meet the needs of only this colony. The name, however, is expressly stated in the charter, and it was in New Netherland that the directors of the West India Company who became patroons centred their efforts.<sup>3</sup> Just as in the Portuguese system of captaincies to court favorites, so in the Dutch system of patroonships the offer was addressed only to a favored circle, to "members of the company." The proposals were well received; in fact, even before the charter was published, certain directors bestirred themselves to grasp the

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3. But as the land in many places being full of weeds and wild productions, could not be properly cultivated in consequence of the scantiness of the population, the said Lords Directors of the West India Company, the better to people their lands and to bring the country to produce more abundantly, resolved to grant divers Privileges, Freedoms and Exemptions to all Patrons, Masters or Individuals who should plant any Colonies and cattle in New Netherland, and they accordingly have constituted and published in print these following exemptions, to afford better encouragement and infuse greater zeal into whomsoever should be inclined to reside and plant his Colonie in New Netherland.



opportunity.<sup>4</sup> While only wealthy persons could handle such enterprises, the privileges of the charter were, of course, open to all persons, peasants or nobles, who could meet the conditions.<sup>5</sup> The Company reserved the lands "on and around the island of Manhattan," as the "commercial emporium" of the province, to which emporium "all products for exportation should first be brought," but all other land they were disposed to grant to whosoever could bring it into successful cultivation. But recognizing that the measure would not appeal to the poor tenantry of Holland, they addressed the wealthier class already interested, as members of the trading company. To such members as should "undertake to plant a Colonie there of fifty souls, upwards of fifteen years old," within four years, the Company offered the feudal status of Patroon within the area each would succeed in colonizing. The extent of a colony of fifty souls was limited to sixteen miles on one bank of a waterway, or eight miles on both shores of a navigable stream; but the colony might extend indefinitely into the interior. In ratio to the increase of colonists over

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4. While this charter was under consideration in the meetings of the Company at Amsterdam, two of the directors (Samuel Godyn and Samuel Bloemmaert) purchased of the Indians a tract of land on Delaware Bay, extending from Cape Henlopen (the southern boundary of New Netherland) northward, full thirty miles, and two miles in the interior. This purchase was ratified by the Company when the charter was issued. Very soon afterward Killian Van Rensselaer purchased a large tract of the natives on the upper navigable waters of the Hudson River; and Michael Pauw, another director, secured by the same means a large tract in New Jersey at the mouth of the river opposite Manhattan, and all of Staten Island. This adroit management of wide-awake directors, in securing the best lands in the province, as to situation—who "helped themselves by the cunning trick of merchants"—provoked jealousy and ill will among their fellow directors, which was finally allayed by admitting others into partnership with them.—Lossing.

5. Such members of the said company shall be acknowledged Patroons of New Netherland, who shall, within the space of four years next after they have given notice to any of the Chambers of the Company here, or to the Commander or Council there, undertake to plant a Colonie there of fifty souls, upwards of fifteen years old.

the stipulated fifty, the limits of the colony along a waterway might be expanded.

The Patroon was to be the Lord of the Manor, with absolute authority. He could hold inferior courts, and in any cities developed in the colony was to have power to appoint magistrates and municipal officers.<sup>6</sup> Settlers were to be exempted from provincial taxation for ten years; and for that period every man, woman and child "was bound not to leave the service of the Patroon without his written consent." The Company undertook to furnish the colonies with as many African slaves "as they conveniently could," also to protect them against foes; and the Patroons undertook to extinguish Indian land titles by purchase, and support a minister of the Gospel and a schoolmaster. All colonists, under pain of banishment, were forbidden to manufacture cloth of any kind, that being a staple industry of the Netherlands.

The Patroon was to be vested with almost unlimited power; through the Patroon Courts, he, as presiding officer of that court, had the power even of life and death over the people of his colony.<sup>7</sup> There was a restriction, but ways of

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6. Article VI reads:

"They shall forever possess . . . as also the chief command and lower jurisdictions. . . . And in case anyone should in time prosper so much as to found one or more cities, he shall have power and authority to establish officers and magistrates there, and to make use of the title of his Colonie, according to his pleasure."

Article IX of the charter provided:

"Those who shall send persons over to settle Colonies shall furnish them with proper instructions in order that they may be ruled and governed conformably to the rule of government made, or to be made, by the Board of Nineteen, as well in the political as in the judicial government."

7. Invested as well by the Roman law, as by the charter, with the chief command and lower jurisdiction, the Patroon became empowered to administer civil and criminal justice in person, or by deputy within his colonie; to appoint local officers and magistrates; to erect courts and to take cognizance of all crimes committed within his limits; to keep a gallows, if such were required, for the execution of malefactors, subject, however, to the restriction that if such gallows happened, by any accident to fall, pending an execution, a new one could not be erected, unless for the purpose of hanging another criminal. The right to inflict punishment of minor sever-



overcoming this curb were devised much as landed interests of our day find ways of "getting around" the law; the Patroon drew from prospective settlers a promise "not to appeal from any judgment of the local tribunals." While O'Callaghan refers to the "hangman of the colony," and there is record of an execution in the Van Rensselaer "Bowier Manuscripts," these authoritative papers show that no such office existed in the patroonship, and that executions in the province were exceedingly rare. Still, with almost uncurbed power, "it is easy to imagine the high-handed and corrupt justice thus meted out to the suitors in these Patroon's Courts." Fortunately, perhaps, there were not many patroonships, and only one that developed permanency, that of Kiliaen van Rensse-

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ity was necessarily included in that which authorized capital convictions, and accordingly we find several instances throughout the record of the local court, of persons who had, by breaking the law, rendered themselves dangerous to society, or obnoxious to the authorities, having been banished from the colonie, or condemned to corporal chastisement, fine, or imprisonment, according to the grade of the offense.

In civil cases, all disputes between man and man, whether relating to contracts, titles, possessions or boundaries; injuries to property, person, or character; claims for rent, and all other demands between the Patroon and his tenants, were also investigated and decided by these courts; from the judgment of which, in matters affecting life and limb, and in suits where the sum in litigation exceeded twenty dollars, appeals lay to the Director-General and the Council at Fort Amsterdam. But the local authorities, it must be added, were so jealous of this privilege that they obliged the colonists on settling within their jurisdiction to promise not to appeal from any sentence of the local tribunal.

The laws in force here were, as in other sections of New Netherland, the civil code, the enactments of the States General, the ordinances of the West India Company, and of the Director-General and Council, when properly published within the colonie, and such rules and regulations as the Patroon and his co-directors, or the local authorities, might establish and enact.

The government was vested in a general court which exercised executive, legislative, or municipal, and judicial functions, and which was composed of two commissaries (*gecommit teerden*), two councillors styled indiscriminately by *raets-persoonen*, *gerechts-persoonen* or *raedts-vrienden*, or *schepenen*, and who answered to modern justices of the peace. Adjoined to this court were a colonial secretary, a sheriff, or *schout-fiscal*, and a *geracht-bode*, court messenger, or constable. Each of these received a small compensation, either in the shape of a fixed salary or fees, the commissaries and magistrates fifty, one hundred or two hundred guilders an-





EMBARKATION ON THE "PRINCESS AMELIA," AUGUST 16, 1647  
(SHOWING WILLIAM KIEFT AND PETER STUYVESANT IN THE LEFT FOREGROUND)





laer at the head of navigation on the Hudson.<sup>9</sup> He erected "the manorship of Rensselaerswyck, which in subsequent years became famous."<sup>9a</sup> Of the other directors of the West India Company who were granted patroonships Samuel Godyn and Samuel Bloemmart controlled territory on Delaware Bay, Michael Paauw took Staten Island and the New Jersey shore of the Hudson, opposite Manhattan. Other patroons were Cornelis Melyn, Adriaen van der Donck, Meyn-

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nually, according to their standing; and the court messenger one hundred and fifty, with the addition of trifling fees for the transcript and service of papers. The magistrates of the colonie held office for a year, the court appointing their successors from among the other settlers, or continuing those already in office at the expiration of their term of service, as it deemed proper.

The most important functionary attached to this government was, as throughout the other part of the country, the *schout-fiscal*, who, in discharge of his public functions, was bound by instructions received from the Patroon and co-directors, similar in tenor to those given to the same officer at the Manhatans. No man in the colonie was to be subject to loss of life or property unless by the sentence of a court composed of five persons, and all who were under accusation were entitled to a speedy and impartial trial. The public Prosecutor was particularly enjoined not to receive presents or bribes, nor to be interested in trade or commerce, either directly or indirectly; and in order that he might be attentive to the performance of his duties, and thoroughly independent, he was secured a fixed salary, a free house, and all fines amounting to ten guilders (\$4) or under, besides the third part of all forfeitures and amendes over that sum were his perquisites.—"History of New Netherland," by O'Callaghan, Vol. I, 320-32.

9. . . . It remained for Killiaen van Rensselaer, the first Patroon, to become the founder of an enduring settlement here. (Albany County). He it was to whom the Dutch West India Company, under a plan approved by the Lord States-General, granted manorial rights and the permission to establish a colony. While he did not come himself, he sent a few settlers here in 1630. These were followed by others in subsequent years, but he remained at his home in Amsterdam and administered his affairs from there. . . .—Chester's "Legal and Judicial History of New York, Vol. III, p. 3.

9a. The first step to organize a court in the colony of Rensselaerswyck was taken by the Patroon on July 1, 1632, when he appointed Rutger Hendrickz van Soest schout and empowered him to administer the oath of schepens to Roelof Jansz van Masterland, Gerrit Theusz de Reus, Maryn Adriensz, Brant Peelen and Laurens Laurensz, all of whom, with the exception of de Reus, were then residing in the colony. The Patroon issued instructions for the schout and schepens on July 20, 1632, and sent these to the



dert Meyndertse van Keren, Hendrick van der Capelle and Cornelis van Werkhoven.<sup>10</sup>

Some of these patroons began to exploit their manors immediately. Van Rensselaer sent some settlers to the Hudson

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colony by his nephew, Wouter van Twiller, the newly appointed director-general of New Netherland, who also took with him a silver-plated rapier with baldric and a hat with plumes for the schout, and black hats with silver bands for the schepens.

Van Twiller sailed from the island of Texel, on the ship "Soutberg," shortly after July 27, 1632, and arrived at New Amsterdam in April of the following year. He had with him a power of attorney from Killiaen van Rensselaer to administer the oath of schout to Rutger Hendrickz van Soest, but as far as can be judged from the meagre information that is available did not administer the oath.

Conditions just then were not favorable for the erection of a court in the colony. Differences had arisen in the board of directors of the Dutch West India Company in regard to the fur trade, and efforts were made by those who were opposed to the agricultural colonization of New Netherland to deprive the Patroons of the privileges granted to them by the charter of Freedoms and Exemptions. Van Rensselaer complains of this in a memorial presented by him to the Assembly of the XIX on November 25, 1633, in which he makes the statement that in July 1632, he had people and animals enough to start five farms, but that his efforts were frustrated because the Company refused to let him have carpenters, smiths and other mechanics, and also declined to furnish his people with supplies, in exchange for grain and dairy products.

Taking this statement with the facts that Rutger Hendricksz' term of service as a farmer was about to expire and that his name does not appear in the records of the colony after 1634, it seems safe to conclude that when Van Twiller arrived in New Netherland Rutger Hendricksz had determined to leave the colony and declined to accept the position of schout.

Van Twiller wrote to the Patroon and recommended Brant Aertsz van Slichtenhorst for the post, but before his letter was received the Patroon had already made other arrangements, and entered into a contract with Jacob Albertsz Planck, whereby the latter was engaged as schout for the period of three years. Planck received his instructions on April 27, 1634, and soon after sailed for the colony, where he arrived on or just before the 12th of August. His instructions provided that on his arrival in New Netherland he was to present himself before Director Van Twiller and to request him to administer to him the oath of office, "instead of to Rutger Hendricksz, according to previous power of attorney," and, furthermore, that at the first opportunity he was to choose three schepens from among the fittest of the colonists, so that he could hold court, if need be. Presumably, therefore, the court of the colony (of Rensselaerswyck) was first organized shortly after August 12, 1634.—See the Preface of Minutes of the Court of Rensselaerswyck, 1648-1652, translated by State Archivist A. J. F. Van Laer (University of State of N. Y., 1922).

10. Of all these patroonships, that of Rensselaerwyck alone assumed prominence and power. Its affairs were directed by men of ability, and



colony in 1630, and in that year Captain De Vries, partner of Godyn, led two ships from Texel. One ship was captured on the way, but the other, with colonists, cattle, seeds and implements and eighteen cannon, reached Delaware Bay. Near the site of Lewiston the thirty emigrants settled, and the ship returned to Holland for more colonists. In the spring of 1632 De Vries was again in Delaware Bay, but found only the bones of the settlers. They had been massacred, Indians suddenly descending upon the settlement, and obliterating it. Other settlements had chequered existence, but that of Rensselaerwyck went on to increasing strength, and to some extent its influence was felt long after English dominion had been ended. In the manor of Rensselaerwyck, the manorial system of land tenures was perpetuated "without interruption by changes of government during our entire colonial history, and for more than fifty years after the Declaration of Independence."<sup>11</sup>

To what extent the patroon system affected the development of the Dutch colonies, or guided the industry and am-

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among its officials was one at least who subsequently became distinguished at New Amsterdam in the participation in the general affairs of New Netherland. In 1632 a judicial system consisting of a *schout* and a court of *schepens* was laid out for Rensselaerwyck, but it was two years before the court was really set up. It was the first local court established in New Netherland. The first *schout* was Jacob Albertsen Planck; after him in that office were Adriaen van der Donck, Nicolas Coorn and Gerard Swart. Arendt van Curler, or Corlaer, was the commissary general, or superintendent, and he was also the colonial secretary until 1642, being succeeded in that office by Anthony de Hooges. Dirck van Hamel was also secretary of the colony. Among the councillors, or *schepens*, at various times were Brant Peelen, Gerrit Theusze de Reux, or Reus, Cornelis Anthonisz, van Schlick, Pieter Cornelis van Munnicksen, Marinus Adriaenz or Maryn Adriaensen, Laurens Laurensz, Goosen Gerritsz, Rutger Jacobs, Jan van Twiller, Gerrit Varrick, Jan Baptist van Rensselaer and Abraham Staas or Staets, who was president of the council.—Chester's "Legal and Judicial History of New York," Vol. I, 22.

11. The first Patroon, and those who succeeded him, perpetuated the manorial system of land tenures without interruption by changes of government during our entire colonial history, and for more than fifty years after the Declaration of Independence. The government of the patroons however, was subject to the same vicissitudes and interruptions as were



bition of the individual colonist is a theorem that would develop diverse opinions. Lincoln, in his "Constitutional History of New York," has interestingly traced the origin, development and consequences of the patroon system (see Vol. II, 10-27). Others have condemned the system. And while it is clear that the Dutch colonization was not as successful as the English, the cause must not be looked for altogether in the manorial system of the former. It should not be forgotten that at the time the great Puritan movement began, the English were mainly agriculturists, and the Dutch were merchants and manufacturers.<sup>12</sup> And in a new land, the true base of prosperity lay in agriculture, not trade. Still,

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visited upon the Dutch government at New Amsterdam. A change in sovereignty came with the Dutch capitulation to the English, September 24, 1664. The English rule continued from that date until the Revolutionary War, with the exception of about six months prior to the Treaty of Westminster, on February 19, 1674, during which the Dutch were again in control. With the exception of the difference in allegiance, the English rule brought only minor changes at Albany for several years and down to the time of the Dongan Charter in 1686, for the settlement was essentially Dutch. The courts here continued to exercise practically the same jurisdiction as formerly, and many of the officers retained their old titles.—Chester "Legal and Judicial History of New York," Vol. III, p. 4.

12. There was something in the blood of the English Puritans which fitted them to be the settlers of a new country, independent of cravings for religious liberty. In their new homes in the cheerless climate of New England we see traits which did not characterize the Dutch settlers of New York; we find no patroons, no ambition to be great landed proprietors, no desire to live like country squires, as in Virginia. They were more restless and enterprising than their Dutch neighbors, and with greater public spirit in dangers. They loved the discussion of abstract questions which it was difficult to settle. They produced a greater number of orators and speculative divines in proportion to their wealth and number than the Dutch, who were phlegmatic and fond of ease and comfort, and did not like to be disturbed by the discussion of novelties. They had more of the spirit of progress than the colonists of New York. . . . They kept Sunday with more rigor than the Dutch, and were less fond of social festivities. They were not so genial and frank in their social gatherings, although fonder of excitement.

Among all the new settlers, however, both English and Dutch, we see one element in common—devotion to the cause of liberty and hatred of oppression and wrong, learned from the weavers of Ghent as well as from the burghers of Exeter and Bristol.—Lord's "Beacon Lights of History," Vol. XI, 33.



there seems to be no doubt that the manorial system would curb the spirit of independence in the individual.<sup>13</sup> It is also clear that divided authority, such as existed in the Dutch colony after the coming of the patroons, must have interfered with any wish the Dutch West India Company may have had for the harmonious administration of New Netherland.<sup>14</sup> The clashing of authority was evident during the first few years, and there were three changes in the governmental head—director-general—within eight years. It then, in 1638, became evident to the West India Company, and the States General, that they must vest in the next governor, the fourth director-general, supreme responsibility over even those of their own directors who were patroons.

Governor Kieft clashed with the Rensselaerswyck authorities, and his successor, Stuyvesant, in 1652, to all intents

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13. As a whole, the patroon system was not the success which its promoters had anticipated. Eventually serious conflicts developed between the patroons on their respective manorial properties and the West India Company in New Amsterdam. It was impossible that two such colonizing institutions with interests of largely contrary character and each possessing administrative and judicial powers to a greater or less extent independent of each other, should long live in perfect accord. Quarrels between the patroons and the director-general began almost at once, and later on, during the administrations of Director-General Kieft and Director-General Stuyvesant, they became fruitful sources of trouble. The immediate result of these contentions was seen in less than two years. Complaints of the patroons were taken before the West India Company and the States General, and, in the controversy which ensued, blame was thrown upon Minuit, who had countenanced and confirmed these large grants of land with all their objectionable features. Therefore, he was recalled, and returning to Holland early in 1632, his administration came to an end.—Chester's "Legal and Judicial History of New York," Vol. I, 23.

14. This was excellent for such as could afford to become patroons; but what about the others? The charter provided that any emigrant who could pay for his exportation might take up what land he required for his needs and cultivate it independently. Other emigrants, unable to pay their fare out, might have it paid for them, but in that case incurred a mortgage to their benefactors. In effect, they could not own the product of the work of their hands until it had paid their sponsors for their outlay, together with such additions in the way of interest on capital as might seem to the sponsors equitable.

The Company further undertook to supply slaves to the colony should they prove to be a paying investment . . . but the patroon planters could



crippled the judicial authority of the patroons when he erected the court at Fort Orange and Beverswyck and arrested Brant Aertsz van Slichtenhorst, Director of Rensselaerswyck. Thereafter this, the last, Patroon's Court functioned weakly until 1665, when, under English jurisdiction, it was merged in that of Fort Orange and Beverwyck.<sup>15</sup>

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dispense with black slaves, since they had white men enough who cost them no more than their keep, and would, presumably, not involve the expense of overseers.—Julian Hawthorne, in his "History of the United States," Vol. I, 106, U. S. section of "World's Best Histories."

15. The court as organized (in 1648) by Van Slichtenhorst consisted at first of four and afterwards of five persons, of whom two were designated as *gecommitteerden*, or commissioners, and two, or afterwards three, are in the record indiscriminately referred to as *raden*, *raetspersonen*, *gerechtspersonen*, or *rechtsvrienden*. The duties of the *gecommitteerden* were primarily of an administrative nature, while those of the *raden*, contrary to what one might expect from the title, seem to have been chiefly judicial. The *gecommitteerden* represented the patroon and acted under definite instructions from the guardians. The *raden*, on the other hand, were appointed by the director, but represented the colonists, it being at that time held sufficient if persons who were to represent others were chosen from among them, so as to represent their class. The only requirement was that they should not be in the patroon's service. Goossen Gerritsz made a point of this on October 22, 1648, when as one of the reasons for his being unable to accept the office of *gerechtsperson* he stated that he was "not yet on a free basis with the patroon." The objection, however, was overruled, so that he was obliged to serve.

The members of the court were, as a rule, chosen from among the most prominent residents of the colony. . . .

The proceedings of the court presided over by Van Slichtenhorst cover the period from April 2, 1648, to April 15, 1652. They form the most important source for the history of the colony (of Rensselaerswyck) during that period, but unfortunately add but little to what is known from other sources in regard to the outstanding event of that period, namely, the controversy between Van Slichtenhorst and General Peter Stuyvesant regarding the jurisdiction of the territory around Fort Orange, which forms one of the dramatic episodes of the history of New Netherland. As is well known, this controversy had its origin in the claim made by the patroon, as early as 1632, that "all the lands lying on the west side of the river, from Beyren Island to Moeneminnes Castle," . . . "even including the place where Fort Orange stands," had been bought and paid for by him. The Dutch West India Company, on the other hand, maintained that the territory of the fort, which was erected several years before the land of the colony was purchased from the Indians, belonged to the Company, and consequently was not included in the patroon's purchase. The question had remained unsettled during the lifetime of Kiliaen van Rensselaer, but came to an issue when Van Slichtenhorst, soon after his arrival in the colony,



began to issue permits for the erection of houses in the immediate vicinity of the fort. Stuyvesant objected to the erection of these houses, on the ground that they endangered the security of the fort, and ordered the destruction of all buildings within range of cannon shot, a distance at first reckoned at 600 geometrical paces of five feet to the pace, but which afterwards was reduced to 150 Rhineland rods (equal to 12.36 English feet). The order called forth a vigorous protest from Van Slichtenhorst, who regarded it as an unwarranted invasion of the patroon's rights, and he proceeded with the erection of the buildings. A counter protest followed, and in 1651 charges were brought against Van Slichtenhorst, who was summoned to appear before the director general and council at Manhattan, and there detained for four months. The controversy continued after his return, but was definitely settled on April 10, 1652, when a proclamation, drawn up by the director general and council of New Netherland on the 8th of the same month, was issued in the colony for the erection of a separate court for Fort Orange, independent of that of the colony.

The erection of this court was a serious blow to the colony of Rensselaerswyck, from which it never fully recovered. By virtue of this proclamation, the main settlement of the colony, which was known as the Fuyck, but which in the court record is generally referred to as the *byeenwoning*e, or hamlet, was taken out of the jurisdiction of the patroon and erected into an independent village by the name of Beverwyck, which afterwards became the city of Albany. As a result of this action, the jurisdiction of the court of the colony was thereafter confined to the sparsely settled outlying districts of the colony, so that the cases which came before it must have been very few. No consecutive judicial record of the colony after April 15, 1652, has been preserved, but entries in the minutes of the court of Beverswyck indicate that the court of the colony continued to hold sessions.

Van Slichtenhorst vigorously protested against the erection of the court of Fort Orange and Beverswyck, and with his own hands tore down the proclamation which had been posted on the house of the patroon. For this he was arrested on April 18, 1652, and taken to Manhattan, where he was detained until August, 1653. With his arrest, Van Slichtenhorst's administration came to a close. On July 24, 1652, he was succeeded as director by Jan Baptist van Rensselaer, and as officer of justice by Gerard Swart, so that thereafter the two functions were no longer combined in one person. The latter had been commissioned schout on April 24, 1652, and continued to hold this position until 1665, when, by order of Governor Richard Nicolls, the court of the colony was consolidated with that of Fort Orange and the village of Beverswyck. The year 1665 therefore marks the end of the existence of the first local court that was organized in the province of New Netherland, outside of New Amsterdam.—See "Minutes of the Court of Rensselaerswyck," 1648-1652, by A. J. F. Van Laer, published by University of State of New York, 1922, pp. 16-19.







## CHAPTER IX.

### THE DIRECTORS-GENERAL.\*

The fact that the English superseded the Dutch in the colonization of North America, or rather of that part of it with which this work deals, can hardly be attributed to mismanagement by the directors-general, or to discouragement under the patroons. The home situation controlled the colonial development. In England, under Charles I, the Constitution hardly functioned; from 1629 until nearly his end King Charles was the Constitution. The dissolution of Parliament by Charles in 1629 marked the darkest hour of Protestantism; Puritans looked with ever-increasing suspicion upon the measures of the Primate, Bishop Laud, who seemed more inclined to apologize to Rome than to uphold Protestantism, notwithstanding that nine tenths of the English people were staunch Protestants, most of them rigid Puritans. The Huguenots of France, in their defeat at La Rochelle, had had to fall at the feet of the Catholic cardinal, Richelieu, in 1628; and the Protestants of England feared that their own subjection might come next. They had grimly resisted the King and his favorites in matters affecting their parliamentary rights. When John Felton, in 1628, stabbed the Duke of Buckingham, the Lord Treasurer, to whom they attributed the extravagance of the King, with the extortionate levies it

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\*AUTHORITIES—Winfield's "Land Titles"; Van Rensselaer "Bowier Manuscripts"; Green's "History of England"; Winfield's "History of Hudson County, New Jersey"; Chester's "Legal and Judicial History of New York"; Daly's "State of Jurisprudence During the Dutch Period" Van Leuwen's "Roman Dutch Law"; Van der Linden's "Institutes of Holland"; "Documents Relating to the Colonial History of the State of New York"; Westervelt's "Indians of Bergen County, New Jersey"; "History of Bergen County, New Jersey" (1924); Julian Hawthorne's "History of the United States," Vol. I; of "World's Best Histories"; West's "History of the American People"; Werner, in "Civil List and Constitutional History of the Colony and State of New York" (1888); Duruy's "Short History of France"; Ridpath's "Universal History"; Riker's "Annals of Newtown."



brought, there had been general rejoicing throughout England, outside the Court of King Charles. "God bless thee, little David," cried an old woman, as the slayer of Buckingham passed manacled by; "the Lord comfort thee," shouted the crowd as the Tower gates closed on him. And the House of Commons had resisted the King until Parliament was dissolved. Had the religious aspect seemed less ominous, the people of England might have accepted the political situation, and bowed before violations of their constitutional rights. To surrender religious principles, however, would be harder; men of strong conscience would prefer to hold to their faith even unto death; and in that age of intolerance life hung on a slender thread. So, in the fear that the aftermath of England's part in the defence of La Rochelle would be reversion to Popery in England, with all the bloody persecution that such a state might well bring to Protestants, the Puritans eagerly grasped the means of escape which opened in 1629, when the charter of the Massachusetts Bay Colony was granted. Apprehension was not so keen in Holland at that time, however, for, strangely enough, the Dutch had actually aided Catholic France against the Huguenots of La Rochelle. And while the Dutch situation steadily improved during the next decade, by brilliant military operations as an ally of France and by great naval victories, the state of the English people grew steadily worse. Hence, there were cogent reasons why the English came in thousands to Massachusetts after 1629, and why few Dutch emigrants came during the next decade to New Netherland, to swell the population of New Amsterdam, which, in 1628, was only two hundred and seventy. The Puritans of England turned "to the New World to redress the balance of the Old." During the years (1629-40) of tyranny which followed the close of the third Parliament of Charles, the exodus of English Protestants to New England was so enormous that by 1640 New England had about 25,000 colonists. During the same period, New

Netherland could show no appreciable increase, excepting by English, who were constantly reaching out into New Netherland territory; an ominous trend, which pointed inexorably to the ultimate passing of the land and the government to the English through sheer force of numbers.

Hence, tactless, lackadaisical, and inefficient as the Dutch executives may have been, the failure of Dutch colonization in America was the outcome of circumstances over which the Dutch governors had no control. Unfortunate experiments in colonization were tried by the Dutch West India Company, the most disastrous being that which introduced the patroons, who impoverished the Company and kept the colonists poor; and it cannot be denied that the administrations of some of the directors-general brought misfortune. Yet these were minor factors in the passing of dominion from the Dutch to the English; the European situation as outlined was the controlling factor of colonial growth.

Minuit's six years as Director-General of New Netherland ended in 1632. He was recalled to Holland early in the spring because he favored those who were in reality his employers—the patroons. Maybe he favored some to the detriment of others. At all events, "in the controversy which ensued, blame was thrown upon Minuit, who had countenanced and confirmed these large grants of land with all their objectionable features." The patroonship of Van Rensselaer above and below Fort Orange embraced a district of twenty-four miles of contiguous territory in the valley of the Hudson. But the patroon whose operations were the most open to question was, it seems, Michael Paauw (Pauw), "a Walloon from Belgium, Burgomaster of Amsterdam and Lord of Achtenhoven, near Utrecht." It was found that in 1629-30 he had bespoken much of the water front along the west side of the New York Bay and Hudson River, in close proximity to the Dutch headquarters on Manhattan Island. On July 12, 1630, Director-General Minuit, acting for Michael Pauw,



purchased this land from the Indians, the conveyance being, it is said, the first deed of record in New Netherland.<sup>1</sup> This secured for the absent Michael Pauw the site of Hoboken and vicinity; a deed dated August 10, 1630, secured for the same patroon Staten Island; and on November 22, 1630, the same favored proprietor was made the owner of the western shore of the Hudson, between Communipaw and Weehawken. The estate on the Jersey shore of the Hudson was named Pavonia, and Burgomaster Pauw sent Cornelis van Vorst from Holland to act as his agent. Van Rensselaer, writing on July 20, 1632, stated: "I hear also that Cornelis van Vorst has laborers whose time is up, and that he has engaged new men." Whether the land transactions of this patroon caused the recall of Minuit in 1632 is not disclosed; but the West India Company certainly disputed Pauw's right to Pavonia. After some years the Company regained possession, purchasing whatever right Pauw may have had for 26,000 florins. Part

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1. We, Director and Council of New Netherland, residing on the Island of Manhatas and the Fort Amsterdam, under the authority of their High Mightiness the Lords States-General of the United Netherlands and the Incorporate West India Company at their Chambers, at Amsterdam, do hereby witness and declare that on this day, the date hereof underwritten, before us in their proper persons appeared and showed themselves, to wit: Aeomeauw, Tekwappo, and Sackwomeck, inhabitants and joint owners of the lands called Hobocan-Hackingh, lying over against the aforesaid Island Manhatas, who both for themselves and *rato covern*, for the remaining joint owners of the same land, declared that for and in consideration of a certain quantity of merchandise, which they acknowledged to have received into their own hands, power and possession, before the passing of these presents, in a right, true and free ownership, have sold, transported, ceded and conveyed, and made over, and by these presents they do transport, cede, and convey to and for the behoof of Mr. Michael Pauw, absent, and for whom we, *ex officio*, accept under suitable stipulations, viz.: the aforesaid lands by us named Hobocan-Hackingh, extending on the south side, Ahasimus; eastward, the river Mauritius (Hudson), and on the west side surrounded by a valley and morass, through which the boundaries of the said land can be seen with sufficient clearness, and be distinguished; and that with all the jurisdiction, right and equity, to them, the grantors, in their quality aforesaid belonging; Constituting and putting in their places and stead the already mentioned Mr. Pauw in the real and actual possession thereof, and at the same time giving full and irrevocable power, authority and special command to the said Mr. Pauw peaceably to enjoy, occupy, cultivate, have



of it became the West India Company's farm. In passing, perhaps one incident in the history of Pavonia might be cited to show with what lordly dignity the patroons and their representatives upheld their status in the colony.<sup>2</sup>

Wouter van Twiller became director-general in 1633, and most of the early historians of New York therefore assumed that he was the successor of Minuit. But evidence found, in the Van Rensselaer letters of the period 1630-43, by State Archivist Van Laer, and published by the University of the State of New York, in 1908, as the "Van Rensselaer Bowier Manuscripts," prove that Bastiaen Jansz Krol, or Crol, who had been at Fort Orange before Killiaen van Rensselaer became patroon, and had later had charge of the Rensselaer manor, was Director-General of New Netherland for thirteen months, from the end of February, 1632. Van Rensselaer secured the appointment for him. In the same year, however, the directors

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and hold the aforesaid land *tanquam actor et procurator in rem suam acpropriam*; and also to do with and dispose of the same as he might do with his own lands to which he had a good and lawful title; without their, the grantors, in their quality aforesaid, saving or reserving any part, right, action, or authority thereunto in the least, either of ownership or jurisdiction; but altogether to the behoof as aforesaid, henceforth, forever, wholly and finally desisting, renouncing, and quit-claiming; promising hereby, moreover, not only to keep, maintain, and fulfil this their grant, and whatever shall be done by virtue thereof, inviolable and irrevocable forever, but also to keep and maintain the same lands against all persons free from any claim, challenge, or incumbrance to be made thereon by any persons as also to cause this sale and grant to be approved of and held valid by the remaining joint owners as they are by right obligated to do; all in good faith without fraud or deceit.

In witness whereof these presents are confirmed with our usual signatures and with our seal thereto affixed.

Done at the aforesaid Island of Manhatas, in Fort Amsterdam, this 12th day of July, 1630.

(See Land Paper, Albany, G. G. I.—Winfield's Land Titles, 3).

2. No sooner had Van Vorst become settled in his new home than the dignitaries of New Amsterdam, representing both church and state, resolved to pay him a visit, as well as to assure him of their distinguished consideration as to sample his newly arrived Bordeaux. On the 25th of June, 1636, Wouter van Twiller, who was always "glad to taste good wine," but on whose shoulders rested the weighty cares of the New Netherland state,



of the West India Company decided to send a new Director-General from Holland. They chose Woutter van Twiller, nephew of Patroon van Rensselaer.<sup>3</sup> The new Director did not reach Manhattan until April, 1633. What Krol's actual status on the books of the Company was is not known. There is record of the Council of Director van Twiller, but not of that of Krol; therefore it seems possible that the administration of Director Krol was of provisional character, that his status was more that of Acting Director-General, bridging the gap between the sudden departure of Minuit and the arrival of the new governor. By testimony Krol himself gave "at an examination conducted at the request of the patroons, by a notary in Amsterdam, June 30, 1634" it is, however, evident that he really did hold the office of Director-General of New Netherland for thirteen months, also that he was a

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and Dominie Everardus Bogardus, the old preacher and husband of Anneke Jans, accompanied by Captain de Vries, came over to Pavonia. Van Vorst entertained them with princely hospitality from his newly-filled wine cellar. As time passed on and the sampling of the wine was repeated, the Governor and the Dominie grew warm and disputatious, if not angry, with their host. The modest entry in De Vries' journal, that they "had some words with the Patroon's Commissary" plainly means that they quarreled with him. The subject of the dispute was the murder which had been recently committed in Pavonia. Although the discussion ran high, and bad blood for a while threatened the peace of the occasion, yet another bumper or two was like oil on the troubled waters, for "they eventually parted good friends." Leaving their host and his good *Vrouwetje*, they entered their boat and started for New Amsterdam. Van Vorst, determined to deepen their impression how royally the representative of the Patroon of Pavonia could entertain such distinguished guests, fired a salute from a swivel (steen-stuk, a stone gun), mounted on a pile in front of his house. How the reverberations of that primal salute must have rolled over the hills of Ahasimus, and what a brilliant illumination followed to light the way of the parting guests: "A spark unfortunately flying on the roof, which was thatched with reeds, set it in a blaze, and in half an hour the whole building was burned down." Thus ended the first recorded entertainment in Pavonia.—Winfield's "History of Hudson County, New Jersey." Whereupon, states another account, the Governor, "quickened by a remembrance of his late host's entertainment, ordered a new house built for him."

3. A letter to Krol from Killiaen van Rensselaer at Amsterdam, under date of July 20, 1632, acknowledges receipt of Krol's letter of — January, "in which you thank me that I helped to promote you to the directorship, which I did with pleasure. However, though new lords make new laws, I am astonished at the great changes which they are making, inas-



former Director at Fort Orange.<sup>4</sup> As Director of the most important manor, or patroonship, he would naturally be thought of as the executive best fitted of those on the spot to temporarily take the reins of government from Director-General Minuit, when the latter was recalled to Holland.

Director-General van Twiller had, as *koopman*, or secretary, the official who had served Minuit as such; but none of the first Director-General's councillors were reappointed. Van Twiller's Council consisted of four members: Jacob Jansen Hesse, Martin Gerritsen, Andries Hudde and Jacques Bentyn. Cornelis van Tienhoven was assistant to Jan van Remund, the *koopman*, or secretary. Coenraed Notelman was retained as *schout-fiscal*, giving way, however, in 1634 to Lubbertus van Dincklagen. The latter was a doctor, either of laws or medicine; probably he was skilled in all the sciences. He was also "possessed of considerable means." With such qualifications, Dr. van Dincklagen may have been vested with more legal responsibilities than his predecessors; he may have demanded them; and he hardly would have undertaken the menial duties expected of other schouts.<sup>5</sup> Hence, "he

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much as they summon you and *albert diting* home and send a new *commis* to Fort Orange . . . although they now send my nephew *Woutter* there as director, believe me freely that he has not tried in the least to oust you from your office, as the directors have offered it to him without his asking for it and without my speaking to any one about it for him.—Van Rensselaer "Bowier Manuscripts," p. 217.

4. After he had been away about 15 months, he was appointed to the directorship at Fort Orange on the North River and held the same for three years. The third time he went out again as director of Fort Orange, and to the best of his recollection served again for about two years. After which he was elected director general of New Netherland at Fort Amsterdam, on the island *Manhata*s, lying at the mouth of the aforesaid North River, also named Mauritius, and served in this office 13 months.—Chester's "Legal and Judicial History of New York," Vol. I, 24, quoting from Van Rensselaer "Bowier Manuscripts," p. 302.

5. In what manner judicial proceedings were conducted is unknown. Records were kept under Van Twiller, but they are now irretrievably lost. His *schout-fiscal*, however, Lubbertus van Dincklage, was a doctor of laws, and a man of ability; and, as long as he continued to act, it may fairly be presumed that the management of judicial matters was under his charge.—Ex-Chief Justice Daly, in the "State of Jurisprudence During the Dutch Period," 1623-1674; "History of the Bench and Bar of New York."



did not long retain the favor of Van Twiller." Ulrich Lupold succeeded him as *schout-fiscal*.

What judicial procedure was during the administration of Director Van Twiller will probably never be known; but judging by indirect evidence, he seems to have been more conscientious than his predecessors; and this quality would be reflected more in the functioning of the law than of other departments. In the confidence instilled in the Indians by his administration one sees that Van Twiller aimed to trade fairly with them, and see that their rights were not abused.<sup>6</sup> The Indian question was not a difficult problem under Van Twiller, but under his arbitrary and unfair successor, Kieft, the resentment of the Indians reached such intensity that many Dutch families were massacred, and many settlements were put to the torch. A report to the States General in 1643, reads in part: "Every place almost is abandoned. We, wretched people, must skulk with our wives and little ones, that still are left, in poverty together, by and around the fort on Manhatas, where we are not one hour safe."<sup>7</sup> Van Twiller had had a regrettable experience in one important part of New Netherland, for he had been outwitted by the English in the rich Connecticut Valley, and had been unable to dislodge them, even with a reinforcement of seventy men, "with arquebuses, swords, trumpets and banners"; but in New York waters

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6. His administration throughout seems to have been on the whole peaceful and satisfactory. . . . His dealings with the Indians were just and wise, and in sharp contrast with the policy of his successor, William Kieft, who arrived here in 1638. . . . Kieft's administration was turbulent throughout, and much of the Indian troubles are attributable to his unwise and arbitrary treatment of them. In the report of the "Eight Men" (a body appointed to investigate and determine the troubles with the Indians) to the Directors of the Company, it is stated: "The Indians are in no way to be pacified until the Director Kieft is removed therefrom, they calling daily for 'Wouter! Wouter!' (Van Twiller). . . . These Indians have lived as lambs among us until a few years ago, injuring no one, affording every assistance to our Nation, and had in Van Twiller's time furnished provisions to several of the Company's servants."—"History of Bergen County, New Jersey" (1924).

7. "History of Hudson County, New Jersey" (1923).



the Dutch settlements were satisfactorily expanding under Van Twiller. He may have been somewhat phlegmatic and lackadaisical, and not sufficiently imbued with the commercial spirit to be notably successful as estate manager for a trading company, which fundamentally was his status; but he was of a very different type from William Kieft, who succeeded him in 1638.<sup>8</sup> Van Twiller was a man of honorable character and gentlemanly mien, but Kieft was a "commercial adventurer of ill repute."

However, the directors in Amsterdam, or the Board of the Nineteen, apparently thought that this man of bad character but aggressive personality, would advance their interests in New Netherland better than Van Twiller had. It was becoming necessary to adopt a firmer "front" in the Company's dealings with the patroons; and William Kieft was looked upon as the man most likely to effect this. The restriction of the power of the patroons may be dated from March, 1638, when Kieft arrived off Manhattan Island, on the man-of-war "Haerring"; further restrictions came into effect in 1640,

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8. Van Twiller was no more successful in management than his predecessors had been. His incumbency of five years was a record of blunders, inexperience, lack of energy, and a general incapacity for administration. When it became necessary to recall him, the Assembly of Nineteen determined to send out a man of entirely different character. Accordingly, William Kieft, who, although a commercial adventurer of ill repute and once under serious charges of financial dereliction, a person of determination and activity, was chosen.—Chester's "Legal and Judicial History of New York," p. 26, Vol. I.

8. Van Twiller had a difficult task. His inertia in certain dramatic situations, was rather the demand of the national state of politics than the manifestation of craven characteristics in himself. Europe was in a state of war, and the international situation was delicate. To deal resolutely with some colonial matters might have endangered the offensive and defensive alliance between England and the United Provinces of the Netherlands. Van Twiller was a comparatively young man when he arrived in the province as Director-General; it is therefore all the more creditable that he curbed his youthful spirit and preserved a pacific attitude. That he had the confidence of his uncle, Patroon Van Rensselaer, is indicated by his later responsibility, that of guardian of the Rensselaer estate and heirs, from about 1644.



and by them the privileges of the free settlers were intended to be enlarged. As a matter of fact, however, conditions became much worse, Kieft taking into his own hands and administering as he saw fit the affairs of the whole colony, judicial as well as commercial, without any curb whatsoever. To make his authority absolute he appointed only one man to constitute his Council, the deliberations of said Council of one having no power to overrule his will, for John de la Montagne, the Council, had only one vote to place against Kieft's two. Hence the Governor was the Government; and the Governor was not a man of honor.<sup>9</sup> He had met the instructions of the Board of the Nineteen: "that he should maintain a Council," but had rendered it always a useless minority. This despotism in time defeated itself, as unfair conditions generally do; but for a time life itself was uncertain in New Netherland.

There was apparently some justification for resolute action by Director-General Kieft in the first years of his administration; the Company's commercial affairs in New Netherland were in a chaotic state, and its civil authority was not universally recognized.<sup>10</sup> Life in the larger communities was

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9. In 1638 William Kieft was appointed governor. This governor was a grasping, arbitrary, narrow-minded man, full of his own importance, with a restless activity that was never turned in any right direction, or applied to the accomplishment of any wise purpose. During the nine years that he mismanaged the colony, he retained in his hands the sole administration of justice. In obedience to his instructions, it was necessary that he should keep up the form of a council, but that he might enjoy exclusive control, he reduced it to one member, reserving two votes to himself.—Brodhead's "History of New York"; also Daly's "State of Jurisprudence During the Dutch Period"; "History of the Bench and Bar of New York," p. 8.

10. Public interests had suffered so greatly during the administration of the previous director general that Kieft was confronted with a very grave condition of affairs. The company's employees had been trading in furs on their own account, instead of attending to their duties and observing the prescribed regulations; smuggling was common; guns and ammunition had been furnished to the Indians; the town was in a disorderly state, through the insubordination of soldiers and the rioting of sailors and citizens; drunkenness, theft, fighting, and immoralities generally prevailed, and mu-



somewhat lawless, and on the manors the patroons were almost supreme. So, to regain the lost authority, to more closely control commercial affairs and bring about a better communal state, Kieft may perhaps be pardoned for having temporarily taken full command. Had he been broad-minded as well as strong-minded, his administration might have been beneficial, even though rigorous in its beginning. But power soon shows a man at his true worth. Kieft evidently liked the role of tyrant. A new Charter of Exemptions and Privileges issued in 1640 was designed to restrict the authority of the patroons and increase that of the "free colonists," but it effected little change in the colonial administration. Director Kieft was the law; "His council enacted laws, imposed taxes, and inflicted fines, confiscations, banishments, and other penalties indiscriminately upon the Indians or upon the colonists, as the Director desired."<sup>11</sup> He ignored both the spirit and letter of that charter, which provided for "competent Councilors, Officers, and other Ministers of Justice for the protection

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tiny and homicides were not infrequent. The settlements on the upper Hudson were in a state of discontent, while the rights of the Dutch were threatened on Long Island and in Connecticut to the north, and on the Delaware Bay to the south.

Severe measures of repression were imperatively needed if the authority of the West India Company should be maintained. Kieft did not hesitate, but began to rule with a strong hand. Giving first attention to affairs in New Amsterdam, he issued proclamations in regard to the company's business, the proper conduct of the townsfolk and the legal and judicial procedures under the Holland law which controlled the colony. But his dispensation of justice was a farce.—Chester's "Legal and Judicial History of New York," Vol. I, 28.

11. In 1640 a charter of exemptions and privileges, designed to encourage emigration, was adopted by the College of Nineteen, in which it was declared that the governor and council should decide all questions respecting the rights of the company and all complaints, whether by foreigners or inhabitants of the province; that they should act as an orphan's and surrogate's court, judge in criminal and religious affairs, and administer law generally. In conformity with the charter, Kieft directed that the council should sit every Thursday, as a court of justice, for "the hearing and adjudication of all civil and criminal processes, and for the redress of all grievances of which anyone might have to complain"; and he established certain rules for securing the attendance of parties, and for the general conduct of business. In a court thus constituted, guided and con-



of the good and punishment of the wicked." It also provided for "Courts of the Patroons or Colonists"; but while the strong patroonship of Rensselaerwyck and perhaps some of the feeble ones were able to keep control of their own minor courts, there is no mention of the functioning of Courts of the Colonists in New Amsterdam, or elsewhere. As the Albany records show, Director Kieft's administration manifested "an abundance of court activity," but from the beginning of his régime it was his Council that sat as a court of justice,—the Council in which he had two votes against one. "When anything extraordinary occurred, the Director allowed some whom it pleased him—officials of the company for the most part—to be summoned in addition, but that seldom happened," admitted Adriaen van der Donck, in the "Remonstrance of New Netherland," printed at the Hague in 1649. One would hardly expect such additional judges, referees or arbitrators to have contrary opinions to those of their superior, the all-powerful Director-General. Pettiness, superstition, and inconsistency marked the administration of justice. Hendrick Jensen, arraigned in October, 1638, "for scandalizing the governor," was sentenced to stand at the entrance of the court at the ringing of the bell, and there publicly beg the

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trolled by a man vain, rapacious and vindictive, it may readily be imagined in what way justice was administered. He enacted laws, levied fines or inflicted penalties according to his will. The schout-fiscals, of whom there were two during his governorship, Ulrich Lupold and Cornelis van der Huygens, were occasionally invited to be present at the sittings of the council, but neither they nor his counsellor, Doctor Johannes la Montagne, a learned Huguenot physician, appeared to have had much weight with him. Ever involved in trouble, either with the natives or with the colonists, he was constantly inflicting fines, confiscations and banishments; and though an appeal lay from his judicial decisions to the chamber of Amsterdam, he effectually cut it off by subjecting to fine or imprisonment anyone who attempted to resort to it. Such an administration was fruitful at least of one result. It stirred up the colonists to demand the establishment of judicial and municipal tribunals, similar to those which they had enjoyed in Holland.—Daly's "State of Jurisprudence During the Dutch Period," 1623-74, Vol. I, p. 8; "History of Bench and Bar of New York."

Governor to pardon him. Anthony Jensen's wife Grietje slandered the Reverend Everardus Bogardus. Her husband was fined, and she showed a contrite spirit, "begging pardon of God, the court, and the minister"; but thereafter they seem to have been a marked couple, continually in trouble until, finally, on April 7, 1639, they were sentenced to be forever banished from New Netherland "as public disturbers and slanderers." Jan Hobbesen, in 1641, stole a sheet from a bed in the city tavern. He pleaded intoxication as reason for knowing nothing about the matter. But, after being "put to torture," he confessed. He was sentenced to be whipped with rods, and afterwards banished. A man accused of murder was sentenced to be punished, when apprehended, "by sword until dead." The breaking of two halters around the neck of a gigantic negro sentenced "to be hanged by the neck until dead as an example to all such malefactors," brought the murderer freedom, "by God's providence." For "drawing his knife upon a person," in 1638, Gysbert van Beyerland was sentenced "to throw himself three times from the sail-yard (yard-arm) of the yacht 'Hope,' and to receive from each sailor three lashes at the ringing of the bell."

The justice dispensed may in many cases have properly met the crime; yet, the fact that offenders, or accused, had no appeal against the finding of one man must in itself have stirred resentment and resistance in the minds of colonists who had been reared in a land wherein there was some semblance of representative government. The judiciary was supreme in the Dutch system, and controlled municipal government in Holland, the magisterial bench of burgomaster and schepens having judicial power, and also power equivalent to that of mayor and aldermen of a modern city. A degree of popular government was present in this body, for in most cases it was chosen by the representatives of the people—by a delegation of eight or nine "good men" selected in town



meeting by the burghers for the purpose.<sup>12</sup> But in New Netherland Governor Kieft had more arbitrary sway "than would a king or emperor in their former home." "Month by month Kieft grew in unpopularity, while the protests of the people against him increased and their demands to participate in the government were more and more insistent."<sup>13</sup>

Not only were the colonists resentful of the acts of their Governor; the attitude of the natives grew increasingly ominous. An unscrupulous employer is apt to encourage the same quality in his hirelings. Dishonest trading by the rep-

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12. There had existed in every town and village in Holland, for more than a century, a local tribunal of a highly popular character. It united the twofold functions of a court of justice and of a municipal government, and consisted of a court of magistrates, denominated burgomaster and schepens, with whom were associated a schout, whose especial duty it was to prosecute all offenders before the court, and to carry into execution its resolves or decrees. The burgomaster was a kind of mayor. The schepen resembled an alderman, and the schout performed the duties which, under our system, are respectively assigned to sheriffs and district attorneys. The principle of popular representation was recognized in the composition of this body. The mode of appointment was not uniform throughout Holland; but generally the inhabitants of the town who were possessed of a certain property qualification, assembled annually in a town council, or *Vroedschap*, and elected eight or nine "good men," and this representative body chose the burgomaster and schepens. The schout, under the feudal law, was appointed by the count or manorial lord, though in certain places, as in the city of Amsterdam, he was chosen by the burgomaster and schepens.—Daly, in "State of Jurisprudence During the Dutch Period"; also "Esprit Origine et Progress des Institutions Judiciaries des Principaux Pays de l'Europe," par J. D. Myer, Paris, 1823; tome iii, livre 5, coup d'oeil, sur l'etat, politique des Pays Bas, Chapter ii, 253, Chapter 14, 387; "Placards of Hollande," Vol. II, 695; Van Leuwen's "Roman Dutch Law," book 1, ch. 2, sect. 19, 20, 21; Van der Linden's "Institutes of Holland," Part I, book 3, Chap. I.

13. His arbitrary methods and his general bad judgment in dealing with the situation made the colonists more and more dissatisfied with the condition of affairs in which they were placed, and with the burdens which they were compelled to endure. . . . They chafed under the imperious manners of the director general, who, although without royal rank or prestige, assumed more authority and inflicted more hardships upon those over whom he had been placed temporarily than would a king or emperor in their former home. Naturally, they resented this, and, as the time went on and no signs of a change of heart in their master were manifest, they became more and more determined than ever before to assert themselves, and to demand what they considered were their rights as citizens.—Chester's "Legal and Judicial History of New York," Vol. I, 36.



representatives of the West India Company exasperated as well as impoverished the natives, and Kieft showed no sympathy toward them. Indeed, his inclination was toward further extortion. He treated the Indians as a conquered race, and deemed his own status, perhaps, to be that of emperor ruling both conquerors and conquered. He arrogantly demanded tribute "of furs, maize and wampum." He demanded even the life of the son of a chief in 1641. But he was shrewd enough to see that the rising storm was beyond his power to weather alone. So situated, he was not unwilling to grant the colonists some measure of representative government.

He wanted to wage war upon the Indians, but was not averse to sharing responsibility for such an act with the colonists. Consequently, he called together the heads of families. They met, and according to the custom of Holland selected twelve men to represent them. These were drawn from Manhattan, Long Island, Staten Island, and Pavonia. This board, the first representative body organized in New Netherland, is stated to have assented to the warlike measures planned by Kieft. Whether the approval was unanimous is open to question; it is said that Kieft obtained authorization to proceed by unscrupulous means.<sup>14</sup> But it is certain that this Board of Twelve demanded reforms in local government, being insistent "that courts of justice similar to those which existed in the towns and villages of Holland" should be established. They condemned the Governor's Council of one, and the dispensing of justice by himself, or his underlings.<sup>15</sup>

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14. Determined to carry out his purposes, Kieft, in order to give his action a show of endorsement by the advisory board, induced three of the most unscrupulous members, after a bountiful entertainment, to sign an authorization for him to proceed.—"History of Hudson County, New Jersey."

15. Finally opportunity came to the people in 1641. . . . Kieft determined to wreck vengeance upon the Indians, but, having some doubt concerning the wisdom and the outcome of such a venture, he wished to place the responsibility for a possible disaster upon the community of New Amsterdam, instead of taking it entirely upon himself. Accordingly, he



They probably were not surprised at the outcome. Kieft adhered to his system of government, with one exception; he professed that he had already decided to increase his Council to five. But he saw the danger that lay in representative government, for he summarily dissolved the Board of Twelve, deeming that further meetings would tend "to a dangerous consequence, and to the great injury both of the country and of our authority." He forbade further assemblage "on pain of being punished as disobedient subjects."<sup>16</sup>

Freed from such a constitutional curb, the Director-General went his fatal way unheeding. The Indian situation grew steadily worse in the vicinity of Manhattan, for the Indians positively refused to render tribute in maize "for nothing." The Indian is inherently honorable; at the worst he is manly; or at least those were the common characteristics of the aborigine in the first generations of white inter-

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called upon the heads of families to select twelve representatives to confer with him in regard to the matter. These twelve men were: David Pietersen de Vries, chosen president by his associates; Jacques Bentyn, Maryn Adriaensen, Jan Jansen Damen, Hendrick Jansen, Jacob Stoffelsen, Abram Pietersen Molenaar, Frederick Lubbertsen, Jochem Pietersen Kuyter, Gerrit Dircksen, Joris Rapelje and Abram Planck. They were residents of Manhattan, Pavonia, Long Island and Staten Island.

The Twelve Men—who constituted the first popular representative body of New Netherland—gave their approval to a campaign against the Indians. They also availed themselves of the opening afforded them by their election as a representative body, to make demands on the governor for those reforms in the administration of the affairs of the community which the people, as a whole, had long desired. Particularly, they were insistent that courts of justice similar to those which existed in the towns and villages of Holland—boards of *schepens*, or magistrates—should be established. They also asked that the membership of the council should be increased to at least five; they registered their decided disapproval of the practice of summoning "the common people," that is, the servants and employees of the company, to the bench; finally, they demanded that the director of the council should not sit in judgment unless five of the council were presiding in the court.—Chester's "Legal and Judicial History of New York," Vol. I, 37.

16. And whereas the Commonalty at our request appointed and instructed these twelve men to communicate their good council and advice in the subject of the murder of the late Claes Cornelissen Swits, which was committed by the Indians; this now being completed by them, we do hereby thank them for the trouble they have taken and shall with God's help make use of their rendered written advice in its own time. The said Twelve men



course with them, while their national morale was high. And a mean advantage taken by Kieft of one tribe in 1643, when that tribe, the Hackensack, was beset by another enemy, the fierce Mohawk, united the lower Hudson tribes for one grim purpose, that of exacting a terrible revenge. With tomahawk and torch they laid waste most of Pavonia. Indeed, their onslaught was so furious that not a white man remained within its limits, except as a prisoner. Those who escaped with their lives found that they were not safe from attack even when within a thousand paces of Manhattan fort. Such was the disastrous outcome of Kieft's tyranny in one direction.<sup>17</sup>

While the storm was gathering, before it reached such intensity as to cause all in New Netherland to cry out against Kieft, because of his disastrous Indian policy in particular which brought upon his head the weight of condemnation by the colonists of every phase of his despotic system of government, Kieft again thought it prudent to call into consultation some of his "subjects." The horizon was everywhere dark. His complications with the English, who were spreading out on Long Island, and were firmly, indeed indepen-

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shall now, henceforth hold no further meetings, as the same tends to a dangerous consequence, and to the great injury both of the country and of our authority. We therefore hereby forbid them calling any manner of assemblage or meeting, except by our express order, on pain of being punished as disobedient subjects.—"Documents Relative to the Colonial History of the State of New York," Vol. I, 203.

17. The trouble seemed to be over in April, 1643, when Director-General Kieft concluded a peace treaty with Oratamin, "Sachem of the savages living at Achkinkeshacky (Hackensack)," when both sides promised to forever forget and forgive all injuries done, also "not to molest each other in the future." But it seems that this was but a temporary truce, the Indians being incited by Pachem, "a crafty man" of Achkinkeshacky, to unite for a general massacre. But the tribes of the lower Hudson were at war with the Mohawks, and so possibly the massacre was deferred.

Kieft may have heard of the proposed treachery, and when in July, some of the Hackensack Indians, by the vicissitudes of tribal warfare, encamped for safety behind Jan de Lacher's Hook (in the present Jersey City), Kieft thought the opportunity was a good one to be first in treachery; so, despite the remonstrances of De Vries, who pleaded with him to "stay his hand," not only for humanity's sake, but of stirring the Indians into a bloody war of extermination, Kieft's soldiers "crossed over to Pavonia in



dently, placed in the Connecticut Valley, were sufficiently disconcerting, if one placed territorial aggrandizement first, which it is doubtful if the Dutch West India Company did, excepting insofar as such expansion could swell the coffers of the corporation. Which reflection suggests the unfortunate experience the Company had had in the matter of the patroonships. The Lords of the Manor in reality had tapped the source of wealth that should have come to the Company. They so surrounded the trading posts of the company that the trade which should have reached the posts did not get nearer than the surrounding manors.<sup>18</sup> This had become clear to the Company even before Kieft had been given the colonial reins; and he was becoming perplexed and worried because of his inability to swell the Company's chest. Failure in this of course pointed directly to his own ultimate recall. But probably the most important reason for the convocation of the freemen lay in the ominous aspect of the Indian situation.

So, in the autumn of 1643, he "convoked the community

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the dead of night on the 25th of July, 1643, and fell upon the sleeping savages." De Vries, watching from the fort at New Amsterdam, testified that "the darkness of the night was lit up by the flashes of musketry, and the groans of the doomed victims were plainly heard." Men, women and children were slaughtered. The few survivors crossed to the fort for safety, thinking the attack was by the Mohawks. They were soon disillusioned, however, "and the news of the cruel massacre spreading among the different tribes, they all combined against the whites, determined upon a terrible revenge."—See "History of Hudson County, New Jersey" (1924); Westervelt's "Indians of Bergen County, New Jersey"; "History of Bergen County, New Jersey"; Hawthorne's "History of the United States," Vol. I, of "World's Best Histories."

18. The Company at home presently discovered that its incautious liberality (in granting vast manorial tracts to persons who would settle fifty colonists) had injured its own interest, as well as those of poor settlers; for the estates of the patroons covered the trading posts where the Indians came to traffic, and all the profits from the latter swelled the pockets of the patroons. But the charter could not be withdrawn; the directors must be content with whatever sympathetic benefits might be conferred by the increasing wealth of the colony. The patroons were becoming more powerful than their creators, and took things more and more into their own lordly hands—Hawthorne, in "History of the United States," Vol. I, 106.

into an assembly to plan for the common protection." The freemen met in September, and were evidently willing to elect representatives to coöperate with the Director-General and his Council in the colonial government to the extent offered by the Director. Kieft, for his immediate ends, was not unwilling to follow the old Roman system. He would not give the representatives of the burghers the power to initiate any legislation, but would permit them to give their opinion upon any measure he and his Council might decide upon, and submit to them. In this way he held control, while seeming to offer representative government, for any legislation approved by the delegates of the freemen would seem to reflect the will of the people, even though drafted by himself and his Council. Therefore, the freemen elected eight men, the certification of whose election was signed by twenty-eight freemen, and agreed to approve what legislation their chosen eight should determine. It seems that the election was hardly such, for the freemen had agreed to permit the Director-General to choose the eight men himself, claiming for themselves only the right to reject any undesirable nomination. Jan Jansen Damen was one of the eight, "but he was excluded by his associates for his connection with the Pavonia massacre" and Jan Evertsen Bout was chosen in his place. The other seven were Jochem Pietersen Kuyter, Barent Dircksen, Abraham Pietersen, Isaac Allerton, Thomas Hall, Gerrit Wolfertsen, and Cornelis Melyn. The last-named was president.

The Board of Eight Men, the lower legislative house, as it were, accordingly met in session on September 15, 1643, "to consider the critical condition of the country." Several meetings were held during the year, and the body "passed upon the most important questions of war and peace, and performed other legislative acts." The need of rallying to defend their own homes was urgent, though it is obvious that they did not approve of Kieft's tactics, nor condone the Pa-



vonias massacre. When they reconvened on June 18, 1644, and matters of revenue and taxation were submitted to them they pointedly opposed Kieft's budget plans. Soldiers had come, or were to come from Brazil, and the Eight Men contended "that as the home government had guaranteed protection, as one of the inducements to emigrate, it ought to pay the expense." Furthermore, they claimed that the power of taxation lay only with the States General. However, the need was urgent, the treasury being empty; so finally the Eight Men yielded, and a proclamation was issued declaring that "by the advice of the Eight Men chosen by the commonalty" certain taxes were imposed "provisionally, until the good God should grant us peace, or that we shall be sufficiently aided from Holland."<sup>19</sup> Soldiers arrived from Holland in July, and the Director-General sought to impose further taxes to meet cost of their subsistence. The Eight Men opposed the Governor in this. Whereupon the arbitrary Kieft did what was at that moment fast bringing a king to the block, Charles I of England, and was indeed contrary to the laws of Holland itself—he usurped the power of the people and imposed taxes without the consent of the Eight Men.<sup>20</sup> He stirred the hornet's nest. He had been despotic, in very many acts in the past, but in this he had gone beyond what any free men would tolerate. "Taxation only with consent" was the fundamental principle in Holland, indeed throughout Western

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19. The act of concurring in this recommendation was the exercise of the highest legislative function, and demonstrates that the Eight Men were a parliamentary body, in the most ancient sense. The Executive asked that consent be given to the enactment of a certain revenue measure, in accordance with ancient custom, and his request was granted; which, with the action of the preceding year, settles the character of the body.—Werner, in "Civil List and Constitutional History of the Colony and State of New York," 1888, p. 30.

20. This usurpation created great excitement. The taxes had been rendered more oppressive, and inquisitorial returns demanded, at a time when relief was necessary, and freedom from arbitrary rule had been promised. The brewers resisted the collection of the tax, were prosecuted, and compelled to pay.—*Ibid*, p. 30.



Europe, and for fifteen years in England violation of that principle had been inexorably sharpening the axe which was to part the head from the body of a heedless king in 1649. Taxation without representation stirred the Dutch of New Netherland, just as like usurpation a little more than a century later was to stir the English colonists to grim resistance. The arbitrary rule of Director-General Kieft and the precarious state of the colony so exasperated the Eight Men, representing the people, that, on October 28, 1644, they appealed direct to Holland, memorializing the Board of the Nineteen of the West India Company, and also the States General. They blamed Kieft for their predicament, complaining that he had usurped "princely power." "We did not conceive," they said, "that our powers extended as far as to impose new taxes, but that such must first be considered by a superior authority (to wit, by the Lords majors)." They despaired of ever settling the country under the existing system of government; and their memorial ended with a prayer for a new Governor and representative government, "so that the entire country may not be hereafter, at the whim of one man, again reduced to a similar danger."<sup>21</sup> The Indian trouble they attributed wholly

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21. Honored Lords! This is what we have, in the sorrow of our hearts to complain of: That one man who has been sent out, sworn and instructed by his Lords and masters, to whom he is responsible, should dispose here of our lives and properties at his will and pleasure, in a manner so arbitrary that a King dare not legally do the like. We shall terminate here and commit the matter wholly to our God; who we pray and heartily trust will move your hearts and bless your deliberations; so that one of these two things may happen; that a governor may be speedily sent with a beloved peace to us; or, that your Honors will be pleased to permit us to return with wives and children to our dear Fatherland. For it is impossible ever to settle this country until a different system be introduced here and a new Governor sent out with more people, who will settle themselves in suitable places, one near the other, in form of villages and hamlets, and elect, from among themselves a Bailiff, or *schout*, and *schepens*, who will be empowered to send their deputies and give their votes on public affairs with the Director and Council; so that the entire country may not hereafter be, at the whim of one man, again reduced to a similar danger.—Chester's "Legal and Judicial History of New York," Vol. I, 40, quoting the "Holland Documents," III, in "Documents Relative to the Colonial History of the State of New York," Vol. I, 213.



to the relentlessness of Kieft<sup>22</sup>; and they knew that confidence of the Dutch could not be restored in the natives while Kieft remained in the country.

The complaint reached the States General and the Board of the Nineteen of the West India Company, in Amsterdam, at the time when the Company had become practically bankrupt. The colonists were sustained, and on December 10 the Company resolved to recall Kieft. They were even seriously considering the advisability of transporting the whole of the colonists back to the Fatherland, and of abandoning New Netherland, as an unprofitable enterprise. Such an alternative undoubtedly deeply concerned the States General; hence the request by the Company "for a subsidy in order that the colony should be placed in a safe and prosperous condition" was not inopportune. Decision against the abandonment of New Netherland was taken; matters of reconstruction were promptly considered, the remonstrances, petitions and memorials of the colonists being referred to the Chamber of Accounts. That chamber in March, 1645, sustained the colonists, and recommended the organization of village and hamlet communities somewhat after the manner of the English, and that each community should appoint deputies who, at the call of the Director-General, should assemble twice yearly for "the upholding of the statutes and the laws," with power to deliberate "on all questions which might concern the prosperity of their colonies."

To bring this new order in effect, the Company decided to send Dr. Lubbertus van Dincklagen, a former schout-fiscal under Van Twiller, to New Netherland to take the reins of

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22. The director hath by various uncalled for proceedings, from time to time, so estranged these from us, and so embittered against the Dutch nation that we do not believe anything will bring them back, unless that the Lord, who bends all men's hearts to his will, propitiate them. Thus hath the Antient very truly observed: "Any man can create turmoil, and set the people one against the other; but to establish harmony again is in the power of God alone.—Chester's "Legal and Judicial History of New York," Vol. I, 40.



government from Kieft, and hold them temporarily. However, he did not leave Holland, and ere long his commission was revoked. In July, 1645, the "Assembly of the XIX of the General Privileged West India Company" decided to commission Peter Stuyvesant as Director-General, and instructed him as to the new system of government he was to introduce.<sup>23</sup> But his commission by the States General was not issued until July 28, 1646, and he did not reach New Amsterdam until 1647. Therefore, possibly because peace had been signed with the Indian nations in August, 1645,<sup>24</sup> and an immediate danger to the colony had been thus removed, Kieft was permitted to hold office until the arrival of General Stuyvesant.

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23. The Commissioners of the Assembly of the XIX of the General Privileged West India Company acted upon this report (of the Chamber of Accounts) in instructions given to the Director and Council under date of July 7, 1645. The Council was to consist of "the Director as President, his Vice and the Fiscal." In cases in which the Advocate-Fiscal appeared as Attorney-General, either civil or criminal, the military commandant was to sit in his stead; and if the charge was criminal, three persons were to be associated from the commonalty of the district where the crime or act was committed. The Supreme Council was the sole body "by whom all occurring affairs relating to police, justice, militia, the dignity and just rights of the company" were to be "administered and decided." That is, it was an executive, administrative and judicial body, but possessed no legislative functions, and had no power to alter or abridge the ancient rights of the people. The gathering of the inhabitants "in the manner of towns, villages and hamlets, as the English are in the habit of doing," was to be aided by all means in their power, and the privileges (heretofore noted) as being granted in the Freedoms and the amplications thereof," were continued; and further, "inasmuch as the respective colonists have been allowed, by the Freedoms, to delegate one or two persons to give information to the Director and Council concerning the state and condition of their colonies, the same is hereby confirmed." The recommendation of a semi-annual assembly, therefore, was not confirmed.—"New York Civil List," 1888, p. 33.

24. The treaty was executed at "Fort Amsterdam before the Director and Council, in presence of the whole community," on August 30, 1645, "under the blue canopy of heaven." Those who signed by their marks were the sachems of Achkinkeshacky, Tappaens, and two others, acting for their own tribes and for the Marechawieck Nayeck, Wappinck, Wiquaeskecks, Sintsings, and Kichtawangh tribes. The white men who signed were William Kieft, La Montagne, Jacob Stoffelsen, Jan Onderhil (Underhill), Francis Douthey, George Baxter, Richard Smith, Gysbert Opdyc, Jan Eversen Bout, Oloff Stevensen, Cornelis van Hoyckens, Cornelis Tonissen. "To my knowledge," Cornelis van Tienhoven, Secretary.





## CHAPTER X.

### NEW NETHERLAND UNDER STUYVESANT.\*

Petrus Stuyvesant arrived in New Amsterdam in May, 1647. He had come to right the disordered colony; and the colonists were hopeful that his coming would mark the real beginning of popular government in New Netherland. But it soon seemed that Stuyvesant and Kieft were alike in policy. Stuyvesant's bearing was autocratic, arrogant, unbending, pompous; and he soon let it be known that the Director-General was supreme in New Netherland.<sup>1</sup> Yet, he was so different in characteristics to Kieft that the brutal frankness of his threat, to make any man "a foot shorter" who dared to appeal to Holland against his rulings as Governor, was looked upon by the colonists as an evidence of his basic honesty.

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\*AUTHORITIES—Lossing's "History of the United States"; "Translations from the Breeden Raedt, in the Documentary History of New York"; Bryant's "History of the United States"; Hawthorne's "History of the United States"; Daly's "State of Jurisprudence in the Dutch Period"; "History of Bench and Bar of New York"; Albany Records; O'Callaghan's "History of New Netherland"; Werner's "New York Civil List," 1888 ed.; Hazard's "State Papers"; "Encyclopedia Britannica"; Chester's "Legal and Judicial History of New York"; Green's "History of the English People"; Ridpath's "History of the World"; Van Laer's "Minutes of the Court of Rensselaerswyck," 1648-52; and Van Laer's "Minutes of the Court of Fort Orange and Beverswyck," 1652-56 and 1657-60.

1. Stuyvesant came with the commission of Director-General over New Netherland and the adjoining places, and also over the islands of Curacoa, Buenaire, Aruba, and other dependencies. He was accompanied by Lubbertus van Dincklagen, who had caused the recall of Kieft, as Vice-Director, or Lieutenant-Governor. They landed on a fine morning, in the presence of all the people, who came out with guns and received them with shouts. So vehement was their welcome that nearly all the breath and powder of the city was exhausted. Stuyvesant marched to the fort in great pomp, displaying a silver-mounted wooden leg of fine workmanship. After keeping the principal inhabitants who went to welcome him waiting for several hours bareheaded, while he remained covered, "as if he were the Czar of Muscovy," he told the people that he should govern them "as a father his children, for the advantage of the chartered West India Company, and these burghers and this land." He assured them that justice



Stuyvesant's history was interesting if not wholly commendable<sup>1a</sup>; his personality was commanding; and his silver-mounted "peg-leg" testified both to his bravery and exalted station.<sup>2</sup>

Stuyvesant's staff included Lubbertus van Dincklagen, as Vice-Director or Lieutenant-Governor; Henry van Dyke, as schout-fiscal, and Cornelius van Tienhoven, as secretary. A significant provision was that of the appointment of an English secretary. George Baxter, who, indeed, had been English secretary in the previous administration, since 1642, was continued in office because "none of the company's officers could tolerably read or write in the English language." The percentage of English-speaking settlers in the Dutch colony was increasing rapidly. Another Englishman, Captain Bryan Newton, was a member of Stuyvesant's Council, in which

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should rule; at the same time, he asserted the exclusive privileges of the directorship, and frowned upon every expression of republican sentiment. He declared it to be treason to "petition against one's magistrates, whether there be cause or not; "and he defended Kieft's conduct in rejecting the interference of the Twelve, saying: "If any one during my administration shall appeal, I will make him a foot shorter, and send the pieces to Holland, and let him appeal in that way." These sentiments made the people suspect that the new governor would be an inflexible despot, instead of an indulgent father.—Lossing's "History of the United States," Book III, Chap. IV.

1a. Translations from the "Breedten Raedt," and published in the "Documentary History of New York" paint Stuyvesant in somewhat dubious colors. "It is said that in Holland he had been detected in robbing the daughter of his host, and that he would have been punished for the act had he not been mercifully forgiven for the sake of his father, who was a clergyman in Vriesland, and greatly esteemed. The famous expedition against St. Martin, where Stuyvesant lost his leg—in place of which he ever after wore a wooden one, bound together with rings of silver—this expedition, it is said, was unsuccessful because it was so badly conducted; for the commander wasted, in vainglorious salutes at sea nearly all his powder before he reached the fort; and when he raised the siege . . . he left not only his leg behind him, but much property, especially cannon."—William Cullen Bryant's "History of the United States," Vol. II, 115.

2. Peter Stuyvesant is a favorite character in our history, because he was a manly and straightforward man, faithful to his employers, fearless in doing and saying what he thought was right, and endowed with a full share of obstinate, homely, kindly human nature. He was not in advance of his age, or superior to his training; he was a plain product of both, but free from selfishness, malice, and unworthy ambitions. He was born



Johannes de la Montagne, who had been the sole member of Kieft's Council at one time, also had a seat.

At the outset of Stuyvesant's administration, it seemed that there was little to choose between directors. Kieft remained in the colony for a little while after the arrival of the new Director-General; and he seemed to have Stuyvesant's ear, for those of the Board of Eight Men who had been chiefly instrumental in bringing about Kieft's removal from office were brought to trial by Stuyvesant and found guilty "of grave offense for presuming to attack one in authority over them." Cornelius Melyn and Joachim Pietersen Kuyter were both heavily fined and banished from the colony. The court of justice was, presumably, that which Stuyvesant established immediately after his arrival; it can hardly have been impartial justice, in view of the fact that the presiding judge was Vice-Director van Dincklagen, who had as associates occasionally "others of the Company's officers." And whenever the Director-General wished to preside over the court, his Vice-Director, of course, gave way.<sup>3</sup> It seems somewhat remark-

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in 1602, and came to America a warrior from honorable wars, seamed and knotty, with a famous wooden leg, which all New Yorkers, at any rate, love to hear stumping down the corridors of time. His administration, the last of the Dutch regime, wiped out the stains inflicted by his predecessors, and resisted with equal energy encroachments from abroad and innovations at home. He was a true Dutchman, with most of the limitations and all the virtues of his race; fond of peace and dwelling in his own "Bowery," yet not afraid to fight when he deemed that his duty. His tenure of office lasted from 1647 till 1664, a period of seventeen active years; after the English took possession of the town and called it New York, Peter went back to Holland, unwilling to live in the presence of new things; but he found that, at the age of sixty-three, he could not be happy away from the home that he had made for himself in the new world; so he returned to Manhattan Island, and completed the tale of his eighty years on the farm which is now the most populous and democratic of New York's thoroughfares. There he smoked his longstemmed pipe and drank his schnapps, and thought over old times, and criticized the new. After two and a half centuries, the memories of him are undimmed—Hawthorne's "History of the United States," Vol. I, 111.

3. Immediately after his arrival, Stuyvesant established a court of justice, of which van Dincklage was made the presiding judge, having associated with him occasionally others of the company's officers. The new



able that for seven years after the coming of Stuyvesant the principal court of the colony remained so constituted. However, by its ruling, Melyn and Kuyter, the leaders in the case of the people against Kieft, were banished and sailed as prisoners for Holland on the very ship that took Kieft triumphant and complacent, away from the colony. This ship, the "Princess," sailed from New Amsterdam on August 16, 1647, bound for Amsterdam. It reached no nearer to that port than the rocky coast of Wales, where, in its dismemberment, Governor Kieft, Reverend Everardus Bogardus,<sup>3a</sup> and Schout van der Huygens were drowned. Melyn and Kuyter were rescued, and soon reached Holland, where they personally pleaded their own cases and that of the people.

Van Dincklagen's Council was not the only court. Another of inferior jurisdiction was forced upon Stuyvesant by popular demand ere many months had passed. The West India Company had refused to give the colonists representative government, and Stuyvesant probably was but following their instructions in holding within his own hands the reins of government. "That the people should rule themselves was as good as to say that the horse should loll in the carriage while his master tailed between the shafts," seemed the general attitude of officialdom. But the States General had some degree of control over the Company, and

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tribunal was empowered to decide "all cases whatsoever," subject only to the restriction of asking the opinion of the governor upon all momentous questions, who reserved to himself the privilege, which he frequently exercised, of presiding in the court, whenever he thought proper to do so.—Justice Chas. P. Daly, in "State of Jurisprudence During the Dutch Period," quoting Breeden Raedt, extracts in 4 "Doc. Hist. of N. Y.," 69; Albany Records 20, 28, 29, 38, 56 to 61.

3a. The farm of Dominie Bogardus—called first the Dominie's Bowery, afterwards the Duke's Farm, the King's Farm, the Queen's Farm, as it was conveyed in the progress of events from one proprietor to another—became at length the property of Trinity Church, New York, by letters patent under the seal of the Province. In recent years this property has produced an immense revenue for the church.—O'Callaghan's History of New Netherland.

there were certain principles of government which could not be altogether ignored. The Company might wish to extort much in the way of taxes, but experience had shown that the people always will demand representation in measures that affect their purse. The first pressure upon Stuyvesant had its result in the forming in September, 1647, of the Board of the Nine Men, chosen by the Governor, from eighteen men elected by the commonalty. These nine men were to act in advisory capacity in public affairs; they were also to have certain magisterial authority, it being decreed that three of their number should, in rotation, attend each session of court, and consider all civil cases which might be referred to them as arbitrators. The Board of the Nine Men also had some degree of legislative authority; or at all events, claimed such authority in matters of taxation.<sup>4</sup> But that the Governor did not intend to institute popular government is clear in the stipulation that the first members of the board should nominate their successors, with the aid of the Director, without recurrence again to a popular election, also that the board

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4. The new Director proceeded with great vigor to restore the disordered government. He promulgated municipal regulations, and stringent enactments against smuggling; established customs duties on wines and liquors, and on beaver skins. He ordered an election of eighteen men from Manhattan, Breukelen (Brooklyn), Amersfoort (Flatlands), and Pavonia (N. J.), from whom he selected nine, as "Interlocutors and Trustees of the Commonalty," or "Tribunes" of the people. These Nine Men were to hold courts of arbitration weekly, and were to give advice to the Director and Council on all matters submitted to them. They received their appointment September 25, 1647. Three were taken from the merchants, three from the burghers and three from the farmers. Thus was preserved and continued the system of giving representation to the various vocations which formed the groundwork of municipal organization in the Netherlands. (The tribunal was of very ancient date. Indeed, in its essence it was a method of adjudication which prevailed in one form or another from time immemorial; of which the village elders were the most ancient type. The "Tribunal of Well-Born Men," or "Men's Men," had existed for centuries in the Netherlands. It originally had separate criminal and civil jurisdiction, the first exercised by thirteen and the second by seven men. These courts were afterwards united, the number of members being thirteen until 1614, when it was altered to "Nine Well-Born Men"). This institution was now introduced, as a form of government for the capital of New Neth-



could only function at the pleasure of the Director, or "continue until lawfully repealed." That the Board of Nine Men was actually able to guard the interests of the people arose from determination of the Nine Men rather than from paternal interest manifested by the Governor.

The nine men who constituted the first board were: Augustine Heermans, Arnoldus van Hardenburg, Govert Loockermans, merchants; Jan Jansen Dam, Jacob Wolfertsen van Cowenhoven, citizens; Hendrick Hendricksen Kip, Michael Jansen, Jan Evertsen Bout and Thomas Hall, farmers. They took office in September, 1647.

In addition to the Governor's Council, and the Nine Men's Court of Arbitrators, there were, of course, the courts of the patroons. Over these the Director had little control, though Stuyvesant had at least temporarily nullified the authority of one manorial court, by banishing Melyn, the Patroon of Staten Island. And he was probably hoping that in the powerful manor of Rensselaerwyck he would henceforth have more power, seeing that the old Patroon was dead. However, Stuyvesant was destined to leave Beverswyck, Albany, much discomfited by the failure of an attempt he made, in 1648, to override the authority in the patroonship of Brandt van Slichtenhorst, the commissary of the young patroon, Johan van Rensselaer. For better defence of Fort Orange against Indian attack, the Governor had ordered the demoli-

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erland and surrounding villages. It was provided that six should annually retire, and that twelve men were to be referred to the Director, with the Nine who had served during the year, from whence the new board was to be selected. The Board met on the 15th of November, when the Director communicated his views by written message, in consequence of illness, They consented to appropriations for schools and for completing the church; but declined to repair the fortifications, on the ground that, as the company had agreed to incur expenditures of that class, the money for that purpose ought to come out of the funds derived from customs and excise duties, and from tolls paid at the company's mills. This board, therefore, was also a legislative body, in the ancient sense; that is, a body without whose consent taxes could not be lawfully assessed nor vested rights modified.—Werner, in "New York Civil List," 1888, p. 33-34.

tion of certain houses in Beverswyck. Van Slichtenhorst forbade their destruction, and, in view of "the temper of the people of Beverswyck," the soldiers at Fort Orange dared not enforce the order.<sup>5</sup>

In some other respects the Governor administered his office with effective vigor. The Dutch in New Netherland were fast becoming the minority of the inhabitants, and the English settlers on Long Island and elsewhere in New Netherland were rapidly reaching the point which led to insurrection. However, taking all the colonists—Dutch and English—of New Netherland as an unit, their strength would be but little to pit against that of New England, which had proposed confederation. It must, therefore, be conceded that Stuyvesant's handling of inter-colonial complications, in his first years at New Netherland, was resolute beyond the point of prudence. He succeeded better by his boldness, perhaps. In 1647 he disposed of the Stirling claim to Long Island by arresting the English "governor" sent to administer Long Island, and shipping him on a vessel bound for Holland. In 1650 he tact-

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5. A complete record of the courts presided over by him (Van Schlechtenhorst) from the time when he first entered upon his office until April 10, 1652, has been preserved among the Rensselaerwyck manuscripts. At that date came the culmination of the long controversy which had existed between the patroon's government on the one hand and the Director-General at New Amsterdam on the other, concerning the limits of the jurisdiction between Fort Orange and the colony of Rensselaerwyck, for on that day Pieter Stuyvesant, the Director-General, issued his proclamation establishing a court of justice for Beverwyck (Fort Orange) and its dependencies independent of the patroon's court of Rensselaerwyck and appointed three justices thereto. . . .

The village of Beverwyck was by the proclamation made independent of the colony of Rensselaerwyck, an independence which Stuyvesant was prepared to maintain by force of arms if necessary. Van Slichtenhorst, who had stubbornly resisted the Director-General, was taken under arrest to New Amsterdam and his reign brought to a close. It appears that he was succeeded as schout by Gerrit Swardt in July, 1652.

The patroon's court continued to exist in his colony outside of Beverwyck, but with a greatly lessened importance, until the English conquest, when it was consolidated with that of Beverwyck, then Albany.—Chester's "Legal and Judicial History of New York," Vol. III, 10; see also Footnote 15, Chapter VIII.



fully sent two Englishmen to Connecticut to settle the Hartford boundary dispute, though in 1647 he had almost set the English colonies at war with the Dutch by sending a ship filled with soldiers to New Haven and seizing the "St. Beninio," as a "smuggler," notwithstanding that New Haven considered itself an English colony, not a part of New Netherland.<sup>6</sup> And a little later he dealt decisively with the Swedes on the Delaware and Schuylkill. Stuyvesant was a shrewd calculator of military forces. He did not belittle or antagonize the Indians in the manner of his predecessor, Kieft, notwithstanding that one chief, Ninigret, seemed to have cause for offense.<sup>7</sup> Indeed, the English of New England were uneasy for some years, reports having reached them that, encouraged by Stuyvesant, the Indians were planning to massacre the English. Certainly Stuyvesant had established good relations with the Indians of the Delaware region. He had prevailed upon them to declare the Swedes in New Sweden to be usurpers of land to which the Dutch of New Netherland were entitled. Altogether, Stuyvesant manœuvred his forces well in dealing with the stronger neighboring colonies. But he failed to hold amicable relations with his own people, or, indeed, with his home government.

He soon found that he could not exact obedience from the Board of the Nine Men when his recommendations, or demands, or commands conflicted with the interests of the people. His first Board of Nine Men had given way to another appointed by Stuyvesant; it had been somewhat intract-

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6. Trade was driven from the port of New Amsterdam, for New England and Virginia vessels were afraid to venture into a harbor where, as in the case of the "St. Beninio," seized at New Haven, the Governor did not hesitate to confiscate ship and cargo if his demands were not complied with; and the fear of such acts was said to have been a loss of the trade of twenty-five ships a year to New Netherland.—Bryant's "History of the United States," Vol. II, 130.

7. "I stood," he said, "a great part of a winter day knocking at the governor's door, and he would neither open it, nor suffer others to open it to let me in."—Hazard's "State Papers," Vol. II, 207.

able, and had been dissolved; and in the second board appointed by himself, Stuyvesant hoped for better coöperation; but it was little better than the first, and the president, Adriaen van der Donck, of this second board soon brought upon himself the full weight of the Governor's displeasure. Van der Donck caused a journal to be kept of certain investigations he made of the actions of the Director-General. In most cases these actions were such as might well bring upon the Governor the censure of the States General of the United Netherlands, to which body the Board of the Nine Men had decided to appeal. Stuyvesant showed his displeasure of Van der Donck's historical record by summarily putting its compiler in jail and seizing the journal.<sup>8</sup> "On the 15th (March, 1649), the Director called his Council and other public officers together as a Court of Impeachment, and Van der Donck was expelled from the Council of the Nine Men."<sup>9</sup>

But Stuyvesant could not in this way smother the cry of the people for popular government. Their cause was

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8. Within two years the first board of Nine Men became dissatisfied and uncompliant, and another was appointed. This second board proved as unmanageable as the first, and succeeded in doing what the first had attempted to do without success—in sending a deputation to the Hague to present to the States General a statement of the grievances of the colonists. . . . Of this commission, Adrian van der Donck was the head, as he was probably the author of the *Vertoogh*, or Representation, presented to their High Mightinesses.

This important measure was not carried out without a struggle with the imperious Director. When the Nine Men proposed it they asked permission of Stuyvesant that they might confer with their constituents in a popular meeting to be called to consider the condition of the colony, whether it would approve of sending a delegation to Holland, and to provide means to defray the expenses. The Director refused permission, saying that any such communication with the people must be made through him, and his directions followed. The next best thing the Nine Men could do was to go from house to house to consult with their constituents privately; and Van der Donck was appointed to keep a record of these private conferences. Stuyvesant, exasperated at this defiance of his authority, went to Van der Donck's chamber, in his absence, seized all his papers and the next day arrested and imprisoned their author.—Bryant's "History of United States," Vol. II, 131.

9. "Civil List, N. Y." 1888, ed., p. 34.



strengthened considerably by the return of Patroon Melyn about this time. His sentence of banishment had been reversed by their High Mightinesses, the Lords-Major of the States General; furthermore, he was the bearer of "a mandamus requiring the Director-General to appear at the Hague, either in person or by attorney, to answer the charges which Melyn and Kuyter had brought against him." There was considerable excitement in New Amsterdam when Melyn publicly demanded as public a pronouncement of his vindication as there had been, two years earlier, of his condemnation.<sup>10</sup> Stuyvesant lost ground by this incident, and the suspicion that he had been using his office to promote his private interests became general.<sup>11</sup> So the movement to take the case to the States General could not be resisted.<sup>12</sup> A memorial was pre-

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10. The Patroon was by no means disposed to carry his triumph meekly. He declared that the decision in his favor ought to be pronounced as publicly in New Amsterdam as two years before, he had been publicly condemned. This he demanded in a public meeting in the church soon after his arrival. At this bold step the whole assembly was ablaze with excitement. An excited and vehement debate followed; but the motion to read the mandamus was carried, and Van Hardenburg, one of the Board, was about to obey, when Stuyvesant, declaring that a copy ought first to be served upon him, snatched the document from the hands of the councilman.

All dignity and reserve were thrown aside at this violence of the Governor. The disputants forgot where they were and who they were; an unseemly struggle followed in which . . . they showered hard and angry words upon each other. One party tried to retain, the other to regain possession of the paper, and in the snatching and resnatching the seal was torn from it. The tumult was at length quelled . . . and the Director was persuaded to return the document, on Melyn's promise that a copy should be given him. When the mandamus was read, Stuyvesant said in answer: "I honor the States, and shall obey their commands. I shall send an attorney to sustain the sentence that was pronounced." Melyn demanded that a written reply should be given, but this Stuyvesant refused.—Bryant's "History of the United States." Vol. II, Chap. VI.

11. But the governor's conduct in this (Melyn) affair, his imprisonment of Van der Donck, and the strong suspicion that he used his office to promote his own interests, in shops which he owned and others kept for him, in farms cultivated, in breweries carried on, in ships sailed wholly or in part on his account, and in a monopoly of the sale of arms to the Indians . . . aroused the public indignation.—*Ibid*, Vol. II, Chap. VI.

12. He was in open collision not only with the Board of Nine Men, but with the Schout Fiscal, Van Dyck, and the Vice-Director, Van Dinclage, an enlightened and learned man, and the most influential member of his council.



pared, and means of sending three delegates to Holland were soon subscribed. And so it happened that Van der Donck headed the delegation, carrying the "Remonstrance of New Netherland (*Vertoogh van Nieuw-Neder-Landt*) which strongly condemned Stuyvesant's administration of justice and despotic ways of government. The other delegates were Jacob van Cowenhoven and Jan Evertsen Bout. The *Vertoogh* is believed to have been drafted by Van der Donck, and was probably dated July 26, 1649, which is the date of a letter to their High Mightinesses signed by eight members of the Board of Nine Men, accrediting the three delegates. The *Vertoogh*, which was signed by eleven men, members of the first or second Board of Nine Men, condemned the Director in no gentle terms. One paragraph shows Stuyvesant to be of such choleric temperament as to at times berate his councillors "in foul language better befitting the fish market than the council board."<sup>13</sup> That the drafting of the remonstrance "was not done in a corner, but in the light of day" indicates that, temporarily

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The Council he was enabled to control, but not so with the popular body. The nine men met together, a spirited remonstrance was prepared to the States General, and three of the number, of whom Van der Donck was one, went with it as a deputation to Holland.—Daly, in "State of Jurisprudence During the Dutch Period,"; "History of the Bench and Bar of N. Y.," Vol. I, 11-12.

13. As regards the Director, his manner in Court has been, from his first arrival unto this time, to browbeat, dispute with and harass one of the two parties; not as beseemeth a Judge, but like a zealous advocate. This has caused great discomfort everywhere, and has gone so far and had such an effect on some that many dare not bring any suits before the court, if they do not stand well, or passably so, with the Director; for whom he opposeth hath both sun and moon against him. In addition to the fact that he hath himself appointed and obliged so many Councillors, some of whom also are well disposed, so that he can restrain the others by plurality of votes, he likewise frequently submits his opinions in writing, and that so fully and amply that it takes up some side, and then his word is: "Gentlemen, this is my opinion, if anyone has ought to object to it, let him express it." If any one then, on the instant, offer objection, which is not very easy unless he be well grounded, his Honor bursts forth, incontinently, into a rage, and makes such a to-do that it is dreadful; yea, he frequently abuses the Councillors as this and as that, in foul language better befitting the fish market than the council board; and if all this be tolerated, he will not be satisfied until he have his way.—See the *Vertoogh van Nieuw-Neder-Landt*.



at least, Stuyvesant estimated the will of the people to be stronger than in 1647, when he had considered the case of Governor Kieft and had declared, after sentencing Melyn: "If I were persuaded you would appeal from my sentences or divulge them, I would have your head cut off, or have you hanged on the highest tree in New Netherland." Possibly Stuyvesant sensed the changing of the times. Most governments in Europe at that time were trembling lest the republican spirit which had in that very year, 1649, reached such an intensity in England as to behead the King, might spread to the Continent, and sweep away all monarchical and despotic governments. Of course, Europe was far away. Yet, this might be greater reason why the colonists might take matters into their own hands to make their own will respected by their Governor. The Director may not have been greatly troubled by the attitude of the States General in the Kieft-Melyn case; but, with a soldier's sense of deeming present and near dangers as those of first importance, he had probably decided that the trouble in New Netherland could not be met by maintaining an intolerant arrogance. Whatever may have been his thoughts he permitted the remonstrance to be signed, and sanctioned the sailing of the three delegates with it. Melyn also returned to Holland in that year, 1649, and Stuyvesant's defence was entrusted to his own secretary, Van Tienhoven.

Van der Donck aroused a strong popular feeling for the distant province among the people of the United Provinces by publishing the *Vertoogh*. The States General were also impressed. On the other hand, the managing body, the Amsterdam Chamber of the West India Company was evidently ill at ease. "The name of New Netherland," wrote the Amsterdam Chamber to Stuyvesant, "was scarcely ever mentioned before, and now it would seem as if heaven and earth were interested in it." Action did not come immediately, because the States General had other causes of greater moment to Holland then before it. The States General had brought Hol-

land triumphantly out of the Thirty Years' War (the eighty years of war with Spain) in 1648. In this separate peace treaty with Spain they had acted contrary to the wish of their Stadtholder, William the Second. The States General also sympathized with Cromwell and the Commonwealth of England, while William necessarily sided with the Royalists, for his wife, Mary, was a daughter of King Charles. The States General at one time seemed likely to be swept away altogether by the Royalist faction; and had not William succumbed to smallpox at an opportune moment, in 1650, Holland itself might have lost the independence won by eighty years of bloodshed and warfare.<sup>14</sup> The outlook certainly was dark in 1650 when Holland was struggling against its Royalist stadtholder, for Cromwell might well have taken umbrage against Holland because of its Royalist head.

This unstable state of national affairs may perhaps explain why the Amsterdam Chamber of the West India Company, in a measure, flouted the authority of the States General by opposing the "Provisional Order" issued by the States General in 1650, calling for the recall of Stuyvesant, and the establish-

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14. And so ended the so-called Eighty Years' War. No sooner was peace concluded than bitter disputes arose between Holland on the one hand, and the Prince of Orange, supported by the Army and Navy and the smaller provinces, on the other. He was tempted into foolish acts: he arrested six of the deputies of Holland; he even tried to surprise and occupy Amsterdam; he favored the English royalists, now plentiful in the Provinces, while Amsterdam and Holland inclined toward the Commonwealth. Things went so far that William II had almost destroyed the liberties of the Provinces, and was intent on two schemes—the resumption of the war against Spain, with a partition with France of the Spanish Netherlands, and interference on behalf of Charles II, in England—when his opportune death by smallpox occurred (Nov. 6, 1650). A few days afterward his widow, Mary of England, gave birth to a son who was destined to be the most distinguished man of his race, William III, of Holland and England.

For a time the death of William II restored the Burgher party to power, and made Amsterdam the head of the United Provinces. Holland triumphed over Zealand; the House of Orange, friend of the Stuarts, seemed to suffer eclipse with them; and though the Royalist mob, even at the Hague, set on by a princely rough of the Palatine house, made it



ment of burgher government in New Amsterdam,<sup>15</sup> with a municipal court of two burgomasters, five schepens and a schout, the order providing that the Board of Nine Men were to continue to exercise judicial powers in civil cases until the new court was erected, or for three years. The Amsterdam Chamber resisted the Provisional Order, deeming it to be "a violation of the privileges granted in the charter" of the West India Company. In all probability they instructed Stuyvesant accordingly. At all events he ignored the order, saying he would "do as he pleased."

He did so. For the next two years or so Stuyvesant ruled as of yore. The Director became more despotic than ever. Indeed, one is inclined to attribute his change of attitude to the chaotic state of Dutch affairs in that year—to the struggle for authority between the Stadtholder and the States General. Stuyvesant no longer feared Melyn. This was demonstrated when the Patroon returned in 1650. From that year until

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impossible for the envoys of the English Commonwealth to come to terms with the Republic, still the popular monarchical party was in fact powerless in the Provinces for more than twenty years.—See "Encyclopedia Britannica" sketch of Holland.

(No stadtholder of Holland was elected to succeed William II, the Grand Pensionary or Chief Justice becoming the virtual President of the republic. Nevertheless, there was war between England and the United Provinces during the period 1651-54).

15. The petitioners laid their case before the States General at great length. . . . The papers were referred to a committee, which submitted a report April 11, 1650. This recommended a liberal and popular policy. All grievances were to be remedied, and Stuyvesant was to be recalled! the Patroons were to be "obliged to settle their colonists in the form of villages"; the Nine Men were to be given additional judicial functions, and were to be continued for three years; a burgher government was to be established in New Amsterdam; the Patroons or their deputies, and delegates from the commonalty were to choose representatives in the Council; a judicial system was to be erected in the Province; and the colonists or the Patroons thereof, and the commonalty, were to be convoked on questions of expenditure. The Amsterdam Chamber opposed this "Provisional Order," and submitted a counter proposition merely modifying the original "Privileges and Exemptions." Stuyvesant paid no attention to either.—"New York Civil List," 1888 edition, p. 35.

1657, when he was driven out of the country, Melyn was destined to feel the heavy hand of the tyrannical Stuyvesant.<sup>16</sup>

After one evidence of it in 1650, Melyn returned to Holland, and added his strength to that of Van der Donck and the other people's delegates; and although the Amsterdam Chamber of the Company used all possible means to oppose the popular movement, the Company was obliged to bow to the inevitable a couple of years later. Those were uncomfortable years for Stuyvesant, as well as for those who opposed him. Once, the Vice-Director, Van Dincklagen, was actually imprisoned by Stuyvesant,<sup>17</sup> the former probably having his own case in mind when he wrote to Van der Donck: "Our great Muscovy Duke goes on as usual, resembling somewhat the wolf—the older he gets, the worse he bites. He proceeds no longer by words or letters, but by arrests and stripes." Alas! "Uneasy lies the head that wears a crown." Stuyvesant never walked abroad during those years save under guard of four halberdiers.

There was no Stadtholder of Holland in 1651, and in that year the affairs of the tottering republic were readjusted, with

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16. The Patroon returned in 1650, in a ship which was compelled by stress of weather to put into Rhode Island, and when she arrived . . . at New Amsterdam, the Director ordered her to be seized for violation of a regulation of the Company, in trading without a license, and brought Melyn to trial as her owner. Melyn was only so far interested in her voyage that she brought a number of settlers for his manor at Staten Island, and though the ship and cargo were confiscated, there was no evidence that could hold him responsible. Failing in this, Stuyvesant brought new charges against the Patroon, confiscated his property in New Amsterdam, and compelled him to confine himself to his manor of Staten Island. Melyn surrounded himself with defences, and establishing a sort of baronial court contrived for a while to live till Stuyvesant's persecutions drove him, at length, out of the colony.—Bryant's "History of U. S.," Vol. II, 135.

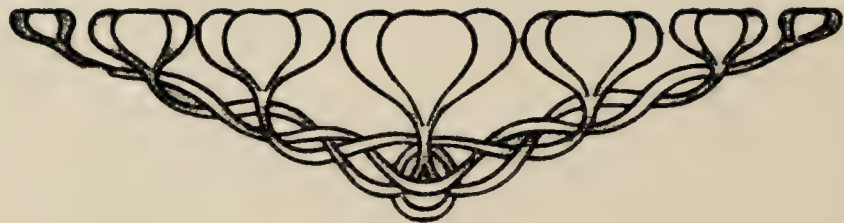
17. With Melyn, on Staten Island, Van Dincklagen, the Vice-Director, also found a refuge from the violence of Stuyvesant. The Vice-Director busied himself in preparing a new protest to the States General on behalf of the colony, when Stuyvesant ordered that he be expelled from the Council. Van Dincklagen refused to be so disposed of, on the plea that he held his commission not from the Director but from Holland. Stuyvesant arrested and imprisoned him for some days and he felt that his life was not safe on Manhattan Island.—*Ibid*, Vol. II, 136.



the States General emerging supreme. So the West India Company had perforce to change its defiant attitude. The Assembly of the Nineteen of the Company yielded so far as, in 1652, to instruct Stuyvesant to bring a municipal form of government into effect in New Amsterdam, in accordance with the seventeenth clause of the Provisional Order of 1650.<sup>18</sup>

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18. We have resolved to permit you hereby to erect a Court of Justice (een banck van justitie) formed, as much as possible, after the custom of this city; to which end printed copies relative to all the law courts here, and their whole government, are sent herewith. And we presume that it will be sufficient at first to choose one schout, two Burgomasters and five Schepens, from all of whose judgments an appeal shall lie to the Supreme Council, where definite judgment shall be decreed.—O'Callaghan's "Documentary History of New York," Vol. I, 387.



## CHAPTER XI. BURGHER GOVERNMENT.\*

The municipal affairs of New Amsterdam were, in part, taken out of the jurisdiction of the Director-General in 1653. Had it not been for the state of war that then existed between England and the United Netherlands some other Governor than Stuyvesant would have had the distinction of inaugurating this measure of burgher government in New Netherland. The States General had decided, in fact, upon the recall of Stuyvesant, but had revoked the order because of the uncertainty of sea travel, England being bent on crippling the maritime power of Holland. There was also a possibility that hostilities might spread to the American colonies, in which case Stuyvesant's experience as a military commander might be needed in the defence of New Netherland.

That Stuyvesant was reluctant to pass to others any authority may be inferred from the fact that he allowed many months to pass before he carried out the instructions of the home authorities. It may also be inferred that the Company

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\*AUTHORITIES—Bryant's "History of the United States"; "The Records of New Amsterdam From 1653 to 1674, Anno Domini," edited by Berthold Fernow; Daly's "State of Jurisprudence During the Dutch Period"; "History of Bench and Bar of New York"; "Records of Burgomasters and Schepens of New Amsterdam"; Brodhead's "History of New York"; O'Callaghan's "History of New Amsterdam"; Valentine's "History of New York"; Meyer's "Institutions Judiciaries"; Van Leuwen's "Practyk der Notarissen" (Rotterdam, 1742); "Practyke in Criminele Saecken," by Joose de Damhouwer (Rotterdam, 1628); Chester's "Legal and Judicial History of New York"; Van Leeuwen's "Roman Dutch Law"; "Colonial Laws" (Bradford, 1694); "Charter Book and Acts of Assembly of 1683" (in office of Secretary of State of N. Y.); "Placards of Stuyvesant, N. Y. Rec. of Burg. & Schep."; "Ordinances of Amsterdam," 1644; "Documents of Stuyvesant's Council, N. Y. Rec. Burg. & Schep."; Werner's "Civil List of New York," 1888 ed.; Sewell's "History of the Quakers: An Abstract of the Sufferings of the People Called Quakers for the Testimony of a Good Conscience" (London, 1733); James Walton Brook's "History of the Court of Common Pleas of City and County of New York."



did not frown upon him for acting tardily. Possibly, they expected him to act as he did, in ignoring the spirit, if not the letter, of the new plan of local government ordered by the States General. Representative government had been the plea of the people, and this it would seem had been the intention of the States General in instructing the West India Company. Van der Donck had returned to New Netherland himself, triumphantly bringing the order. But when, on February 2, the day of the Feast of Candlemas, 1653, Stuyvesant promulgated a decree in the matter, it was clear that representative government was not granted by him, and that his word would still be supreme in New Amsterdam's affairs. According to his proclamation, the municipal officers were not to be elected by the people, but would be appointed by himself.<sup>1</sup> It was fortunate for Stuyvesant, perhaps, that at the moment the danger of war between the New England colonies and New Netherland overshadowed everything else, minimizing internal dissension. The dissension, however, was only tem-

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1. After three years of delay the prayer of the people was listened to in earnest. It was decreed that a "burgher government" should be established; that the citizens of New Amsterdam should have the right to elect their own municipal officers; that these officers should constitute a court of justice, with appeal to the supreme court of the Director and Council; that the export duty on tobacco should be abolished; that emigration should be encouraged by a reduction in passage money; that the importation of negro slaves, hitherto a monopoly of the Company, should be now free to all citizens; and Stuyvesant was ordered to return home. . . .

These long-delayed concessions were taken to New Amsterdam by Van der Donck himself, and in accordance therewith Stuyvesant published a proclamation on the day of the Feast of Candlemas, the 2d of February, 1653. But none knew better than he how to keep a promise to the ear and break it to the hope. The States General meant to bestow upon New Amsterdam the right of self-government as it existed in their own city of Amsterdam—in the election by the people of a schout or sheriff; of two burgo-masters, who were in effect the chief magistrates of the town; and of five schepens, who constituted the court of civil and criminal jurisdiction. Van der Donck might well come home in triumph with this grant of municipal government as the fruit of his three years of incessant labor in Holland; and the people might well rejoice that they were at last to govern themselves. . . . But even this first success the Governor defeated for a time, by assuming the right to appoint, where election was ordered.—Bryant's "History of U. S.," Vol. II, 138.



porarily stifled. The colonists, or at least their leaders, were well aware that this burgher government which Stuyvesant condescended to establish was not government by the people.

However, by the proclamation, the settlement on the island of Manhattan became the city of New Amsterdam; and the municipal officers appointed by Stuyvesant took office. They were: Arendt van Hattem and Martin Kregeir, burgomasters; Paulus Leendersteen van der Grist, Maximillian van Gheel, Allard Anthony, Pieter Wolfertsen van Couwenhoven and William Beeckman, schepens. At their first meeting, on February 6, 1653, Van Tienhoven, the schout-fiscal of New Netherland, acted as the city schout; and Jacob Kip was secretary, or city clerk. It was only a formal meeting, for inauguration; but it was then resolved that regular weekly meetings should henceforth be held at the Stadt Huys, which had formerly been the City Tavern.<sup>2</sup> The magistrates accordingly met on the following Monday, though the place of meeting was in the fort, the Stadt Huys not being ready for use.

There can be no doubt as to the attitude of the city government. The proceedings on February 10 opened with a prayer<sup>3</sup> which testifies to the sincerity of purpose of the burgo-

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2. Thursday, February 6, 1653, present Martin Krigier (Aarent van Hattem), Poulus Leendersen van die Grift, Maximilynus van Gheel, and Allard Anthony, Willem Beeckman and Pieter (Wolfertsen).

Their Honors, the Burgomasters, the schepens of this city of New Amsterdam, herewith inform everybody that they shall hold their regular meetings in the house hereto called the City Tavern, henceforth the City Hall (Stadt Huys), on Monday mornings from 9 O'clock, to hear all questions of difference between litigants and decide as best they can. Let everybody take notice hereof. Done this 6th of February, 1653, at New Amsterdam. Signed (as above except Arent van Hattem).—"The Records of New Amsterdam, From 1653 to 1674, Anno Domini," edited by Berthold Fernow, 1897, Vol. I, 49.

3. We beseech thee, O! Fountain of all good gifts, qualify us by Thy grace that we may, with fidelity and righteousness, serve in our respective offices. To this end enlighten our darkened understandings, that we may be able to distinguish the right from the wrong, the truth from falsehood, and that we may give pure and uncorrupted decisions, having an eye upon Thy word, a sure guide, giving to the simple wisdom and knowledge. Let Thy law be a lamp unto our feet and a light unto our paths, that we may never



masters and schepens, whatever may have been their thoughts of their own impotence, in the face of Stuyvesant's expressed intention to override their actions and findings at will. So far as their power went, however, the city magistrates, the burgomasters and schepens meant to administer their judicial and civic offices with justice, for the common good. They constituted what was to all intents a Court of Sessions, and also a Common Council, though at the outset they placed more importance on judicial functioning, and were inclined to interfere as little as possible in municipal affairs. In this way they thought, perhaps, that they would be able to avoid clashing with vital commercial interests of the Director and Company.

The burgher government of New Amsterdam had been intended to conform as far as practicable with that of Amsterdam, but in actual practice there was considerable difference. In Amsterdam there were four burgomasters, each of whom sat in city hall in rotation, for three months of each year, to deal with matters of public business. Their duties were mainly executive, whereas the duties of the schepens were especially judicial. The schout was the president of the court, as well as prosecuting attorney, though when acting as the latter, his presidential office was filled by the senior burgomaster. For the enactment of municipal ordinances and laws the three bodies, burgomasters, schepens and schout, meeting together, constituted a "college," dignified by the title of "The

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turn away from righteousness. Deeply impress on all our minds that we are accountable not to man but to God, who seeth and heareth all things. Let all respect of persons be far removed from us, that we may award justice unto the rich and unto the poor, unto friends and enemies; to residents and to strangers, according to the law of truth; and grant that not one of us, in any instance, may swerve therefrom; and as gifts do blind the eyes of the wise and destroy the heart, keep therefore our hearts in judgment. Grant unto us also that we may not rashly prejudge any one, but that we patiently hear all parties, and give them time and opportunity for defending themselves; in all things looking up to Thee and to Thy Word for counsel and direction.—"N. Y. Record of Burg. and Schep.," I, 3.

Lords of the Court of the City of Amsterdam.” In New Amsterdam, however, there was but one body, the burgomasters, presiding over the sessions of schepens for all purposes—judicial, executive and legislative. Arendt van Hattem, burgomaster, was the president of the court in the first year, and when he retired, the senior of the succeeding burgomasters became president. In 1656, Stuyvesant decreed a change of presidency every three months; and this order prevailed until 1660, when the burgomasters and schepens succeeded in separating the offices of schout-fiscal and city-schout. Schout-Fiscals Van Tienhoven and De Sille had held the office of city-schout successively, without demanding the presidency of the inferior court, but when Peter Tonnemann was appointed sheriff (schout) of New Amsterdam, in 1660, he insisted upon his right to preside. Furthermore, Stuyvesant insisted that the city-schout be given a vote in all matters in which he was not a party, as irregular a privilege as had been the holding of two offices by the Schouts-Fiscal Van Tienhoven and De Sille. The burgomasters protested, but Stuyvesant had his way, the burgomasters accepting the situation pending response from Holland to their appeal in the matter.

New Amsterdam was a place of about seven hundred inhabitants in 1653, and, as the years passed, the executive work of the municipality increased. In 1657 the burgomasters established a separate court, meeting on Thursday in each week, for the discharge of these duties; and they sought the Director's sanction of the separation of the judicial and legislative courts, releasing them from attendance at the burgher's court. He was unwilling to do so, however, and the court of schout, burgomasters and schepens was destined to continue as a mixed tribunal until the end of the Dutch r`egime.<sup>4</sup> Stuyve-

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4. The proceedings of this tribunal, or as it has been denominated “the Worshipful Court of the Schout, burgomaster, and schepens,” were all recorded by their secretary, or clerk; and as everything that took place before it, the nature of the claim, or of the offence, the statements of the parties, the proof and decision of the court, with the reasons assigned for



sant's interference with the city administration grew less as the years passed. He soon came to concern himself little in its judicial court, though for many years he kept watchful eye on the general affairs of the city, at least those that affected the purse of the Company. He could hardly be blamed for this vigilance, for the whole scheme of colonization had a commercial basis. And, as will be shown in the next chapter, the authorities in Amsterdam were not always at one with

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it, were carefully noted and written down, these records supply a full account of the whole course of its proceedings, and furnish an interesting exposition of the habits and manners of the people. Upon perusing them, it is impossible not to be struck with the comprehensive knowledge they display of the principles of jurisprudence, and with the directness and simplicity with which legal investigations were conducted. In fact, as a means of ascertaining truth, and of doing substantial justice, their mode of proceeding was infinitely superior to the more technical and artificial system introduced by their English successors. None of these magistrates were of the legal profession. They were all engaged in agricultural trading or other pursuits, and yet they appear to have been well versed in the Dutch law, and to have been thoroughly acquainted with the commercial usages, customs and municipal regulations of the city of Amsterdam. This is the more remarkable, as a knowledge of the Dutch law at that period was by no means of easy acquisition. Though the principles and practice of civil law prevailed in Holland, it was greatly modified by ancient usages, some of them of feudal origin, others the result of free institutions, which had existed from the earliest period. . . . In every town and village in Holland, moreover, there existed usages and customs peculiar to the place, which had the force of law, and were not only different in different towns, but frequently directly opposite. The Dutch law, in fact, was then a kind of irregular mosaic, in which might be found all the principles as well as the details of a most enlightened system of jurisprudence, but in a form so confused as to make it exceedingly difficult to master it. That these magistrates should have had any general or practical acquaintance with such a system at all was scarcely to have been expected; but that they had is apparent, not only from the manner in which they disposed of the ordinary controversies that came before them, but in their treatment of difficult questions as to the rights of strangers, their familiarity with the complicated laws of inheritance, and the knowledge they displayed of the maritime law while sitting as a court of admiralty. The Amsterdam Chamber sent out to them the necessary books to guide them as to the practices of the courts of Amsterdam, and when the province passed into the hands of the English there was attached to the court a small but very select library of legal works, mainly in the Dutch language. The authoritative work used in the administration of the criminal law was Damhouwer's "Practyke in Criminele Saecken" . . . printed in Rotterdam in 1628. . . . There were, moreover, men educated in the legal profession



complaining colonists. Undoubtedly, there were many cross currents in the province.

The first meeting of the burgher court in the Stadt Huys at New Amsterdam was on February 24, 1653. Thereafter this reconditioned City Tavern became the venue of all meetings of the municipal body. The building "was situated on Pearl Street, at the corner of Coenties Lane, at the head of the

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in the colony Van Dinclage, the Vice-Director, who had acted as Schout Fiscal for Van Twiller, and Chief Judge of the court established by Stuyvesant, was a Doctor of Laws; and there is sufficient known respecting him to warrant the opinion that he was an able and accomplished jurist. Van der Donck was admitted to the same honorable degree in the University of Leyden, and was afterwards an advocate of the Supreme Court of Holland. The Schout-Fiscal, Nicasius de Sille, who acted as City-Schout for four years, is stated in his commission from the Amsterdam chamber to be "a man well versed in the law." In addition to these there were several notaries: Dirk van Schellyne, who came out in 1641, had previously practiced at the Hague; David Provorst discharged the duties of notary for some years before Schellyne's arrival; and there was another notary named Matthias de Vos. Under the civil law as it prevailed in Holland, a considerable part of the proceedings in a cause, if it was seriously contested, was conducted by the Notary, who was required at least to be well versed in the manner of carrying on legal controversies; and as he was frequently consulted by suitors for advice as to their rights and liabilities, he was generally well informed and capable of giving it. Such was the case with Van Schellyne, who, from the records he has left, was evidently an experienced and skillful practitioner. He was not only connected with the court in the discharge of his duties as Notary, but he was appointed by it, in 1665 High Constable (*conchergio*). All of these men must have had more or less to do with establishing the mode of legal proceeding, and of advising and guiding the magistrates. Van Schellyne and De Sille were in constant official communication with them. Van Dincklage must have brought into use the forms of legal procedure in the court over which he had presided, and Van der Donck was one of the chief getters up of the new tribunal; and, though he survived its creation but two years, he was no doubt advised with and consulted in respect to its organization, and as to the mode in which it was conducted. We find him, in fact, the very year that it was established, claiming its protection as a "citizen and burgher," against the menaces of Stuyvesant. The Court was required in all its determinations to regard as paramount law all regulations established by, or instructions received from, the Chamber of Amsterdam, or the College of Nineteen, for the government of the colony. Next, all edicts or ordinances duly established by the Governor and Council; then the usages, customs or laws prevailing in the city of Amsterdam, and, where they furnished no guide, the law of the fatherland, by which it was particularly understood the ordinances of the province of Holland and of the States



Coenties Slip, facing the East River.<sup>5</sup> It was a structure of three stories. The court room, or council chamber, was on the second floor. In the rear of the court room was the jail, or public prison. Court sessions for the trial of minor cases were held fortnightly, and in times of pressure weekly, from 9 o'clock until noon, continuing in the afternoon if necessary.

Court procedure was very exhaustively described by Justice Daly in his review of the "State of Jurisprudence During the Dutch Period," published in 1897, in the "History of the

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General, and the civil law as it prevailed in the Netherlands, or, as it is denominated by jurists, the Roman Dutch Law.—Ex-Chief Justice Daly, in the "State of Jurisprudence During the Dutch Period," Vol. I, 19-22, of "History of the Bench and Bar of New York," quoting "N. Y. Rec. of Burg. and Schep.," Brodhead's "History of New York"; O'Callaghan's "History of New Netherland"; Valentine's "History of New York"; Meyer's "Institutions Judiciaries"; Van Leuwen's "Practyk der Notarissen (Rotterdam, 1742); "Practyke in Criminele Saecken," by Joost de Damhouwer (Rotterdam, 1628), and others.

5. It was a stone building originally put up as a tavern during the time of Director-General Kieft. It was fifty feet square, with three upright stories and a two-storied gabled roof, and was conspicuous far down the harbor. Behind it was a Dutch garden of flowers and vegetables, and through this was a pathway leading to *Hoogh Strat*, or Stone Street, the road to the ferry.

On the second floor of this building, at the southeast corner, was a large chamber which was used for the court room. On the window panes of this room were engraved the arms of New Amsterdam. Above the bench on which the magistrates sat were the orange, blue and white of the West India Company, and the colors of Holland. Here also was the painted coat-of-arms of the city, which were sent over by the directors of the West India Company in 1654. On the wall near the door were suspended fifty leathern buckets, which constituted the fire equipment of the city. In the cupola which surmounted the building hung a bell which was rung for the assembling of the court and for the announcing of proclamations. The bell ringer was a man of many and varied employments. He served as the court messenger, was the village grave digger, and the church chorister, and sometimes was schoolmaster. As an attendant of the court he served the magistrates in small ways, keeping the court room in order, providing the magistrates with papers and other things necessary to their work, and ringing the bell at the opening of the court in the morning and for adjournment at noon. From the platform erected in front of the Court House he read the proclamations. For many years the bell ringer was Jan Gillisen, familiarly called Kock.—Chester's "Legal and Judicial History of New York," Vol. I, p. 60.



Bench and Bar of New York.”<sup>6</sup> In early years Stuyvesant often clashed with the burgomasters and schepens in matters of city administration. He did not appear to have great respect for their authority at any time. Once, indeed, in a public proclamation, he referred to them as “the little bench of justice,”<sup>7</sup> yet it is obvious from Judge Daly’s review that the burgomasters and schepens had many and important responsibilities. They conducted civil and criminal courts, courts of admiralty and probate, in addition to the ever-increasing executive duties of a growing provincial capital. And, as the years passed, they were accorded enhanced dignity in the city. Although they were fined for absence from court,<sup>8</sup> and received stipends of little more than \$100 yearly,<sup>9</sup> with no assurance that said stipend would be promptly forthcoming, the burgomasters nevertheless could probably find satisfaction in being addressed as “My Lord,” also in other evidences of the fact that they were recognized as dignitaries of conse-

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6. The mode of procedure in civil cases was simple and summary. The court was held once every fortnight, though frequently once every week, upon a stated day. Attached to the court was an officer known as the Court Messenger, who, at the verbal request of the party aggrieved, summoned the adverse party to appear at the next court day. If the defendant failed to appear, he incurred the cost of summons, lost the right to make any objection to the jurisdiction of the court, and a new citation was issued. If he failed again, he incurred additional costs, lost the right to make all “dilatatory exceptions” or to adjourn or delay the proceeding. He was then cited for the third time, and if he did not then appear, the court proceeded to hear the case and give judgment, and he was cut off from all right of appeal, or review. But if, upon hearing the plaintiff’s case, the court deemed the presence of the defendant essential, they might issue a fourth citation, in the nature of an arrest, and compel his appearance. Parties, however, usually attended upon the first citation. The plaintiff stated his case, and the defendant made his answer. If they differed in a fact which the court thought material, either party might be put to an oath, and if they were still in conflict, the court might require the examination of witnesses and the matter was adjourned until the next court day, during which time either party might take the depositions of his witnesses before a notary, or the court might require that the witnesses should be produced, to be examined orally before it, at the adjourned day, under oath. But most generally the matter was disposed of upon the first hearing of the parties without resorting to the oath, or the examination of witnesses. If it was intricate, and it was difficult to get at the truth, it was the constant practice



quence in the provincial capital. "In the court room of the *Stadt Huys* soft cushions made their seats very comfortable, and on Sunday these cushions were removed to the church within the fort, for the further accommodation of the dignitaries. A pew in the church was set apart for them, and on Sunday they and their families went early to the *Stadt Huys* and proceeded to the church in a procession which was led by the court messenger."<sup>10</sup> Their social standing became even clearer in 1657, when Stuyvesant attempted to introduce the "burgher right," with the intention that thereafter no citizen could hold public office who was not classed among the Great Burghers.<sup>11</sup> That there were few of this aristocracy, the Great Burgher class, in New Amsterdam in 1658 is testified to in the fact that in that year, the first in which Stuyvesant would permit double nominations for burgomaster and schepens offices, the Director-General found it necessary to "invest some of the more prominent citizens with the right,

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to refer the cause to arbitrators, who were always instructed to bring about a reconciliation between the parties, if they could; and this was not confined merely to cases of disputes about accounts, or of differences growing out of contracts, but it extended to nearly every kind of case that came before the court. The arbitrators were left to the choice of the litigants, or appointed by the court, or one of the schepens was directed to take the matter in hand and try to reconcile the contestants. If no reconciliation could be effected, or the parties would not submit to final determination or conclusion of the arbitrators, the dissatisfied party might again bring the matter before the court, where it was finally disposed of. These references were frequent upon every court day. In fact, the chief business of this tribunal was in acting as a court of conciliation; and it is worthy of remark that though the amount involved was frequently considerable, or the matter in dispute highly important, that appeals to the court from the decision of the arbitrators were exceedingly rare. Indeed, the first appeal to be found upon the records was brought by a stranger. (a).

There was a more formal mode of proceeding, if parties preferred it. After the plaintiff had stated his case, the defendant might require him to put it in writing, and a day was given to that purpose. The defendant was then obliged to answer in writing, to which the plaintiff would reply, and the defendant rejoin, and there ended the pleadings. Each party then went before the notary of his choice, and had the depositions of his witnesses reduced to writing, a draft or copy of which was retained by the notary, in a book kept by him for the purpose; and, where it was necessary a commission, or as it was called a requisitory letter, might be obtained for the exam-



in order to fill the offices." The magistrates were jealous of the dignity of their public office, and dealt heavily with offenders. One man who, in commenting on a certain judgment, was so indiscreet as to say that the magistrates were "mere blockheads," was called before the court and the schout recommended that he be "sentenced to pray for forgiveness and to pay a fine of twelve hundred guilders with costs."<sup>12</sup> Stuyvesant, when crossed by the municipal officers was wont to ridicule them, yet in all of his official communications, he addressed the City Court in most dignified terms. Some of his communications are directed to the "Honourable, Beloved, Faithful, the Schout, Burgomasters and Schepens of the City of New Amsterdam in New Netherland"; "the Most Worshipful, Most Prudent, and Very Discreet, their High Mightinesses, the Burgomasters and Schepens of Nieuw Amsterdam"; "Respected and Particularly Dear Friends"; "Most Worshipful, Gracious and Distinguished," and other flattering

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ination of witnesses residing beyond the court's jurisdiction, who were examined before the judges of the local court where the witnesses resided, who sealed up the examination, and transmitted it to the court having jurisdiction in the cause. When the proofs were complete, they were added to the pleadings, the whole constituting what was called the Memorial, which was submitted to the court, either party being at liberty to inspect it, and having the right, within a certain time, to have any of the witnesses of his adversary examined upon cross interrogatories, in respect to anything contained in their deposition, which was deemed material, or to have additional witnesses examined on his own behalf in reply; the manner of conducting which subsequent examination was arranged by the judge. But this mode of proceeding being dilatory and expensive was rarely resorted to. The great majority of cases were referred to arbitration, or disposed of upon a summary hearing of the parties before the magistrates; and it may be important to note, in respect to the rules of evidence, that whenever a paper or document was produced, purporting or avowed to be in the handwriting of a party, it was assumed to be his handwriting, unless he denied the fact under oath; and that merchants or traders might always exhibit their books in evidence, where it was acknowledged or proved that there had been a dealing between the parties, or that the article had been delivered, provided they were regularly kept with the proper distinction of persons, things, year, month and day—a practice which in the States of New Jersey and New York, survived these Dutch tribunals and had, at the present day, with certain qualifications or restrictions, extended to nearly every State in the Union. Full credit was given to all such books, especially where they were



titles. When he addressed them merely as "Schout, Burgomasters and Schepens" it would be to convey some reproof.<sup>13</sup> And when, after years of agitation by the burgomasters, Stuyvesant consented to separate the office of schout-fiscal from that of city-schout, or sheriff, he probably enjoyed the transmittal of official instructions which made clear to the burgomasters that the schout, in court, was the highest dignity, the presiding officer.<sup>14</sup>

However, reviewing the period in which New Amsterdam was administered by this inferior court, it is seen that much credit is due to burgomasters and schepens. They were the first judges in the province who were in any way independent of the Company or the patroons; and their administration of justice was, on the whole, commendable and beneficial. The standard of morality improved considerably during the latter part of the Dutch régime. The records of New Amsterdam show much religious intolerance, but in this respect the local

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strengthened by oath, or confirmed by the death of the parties, and also to memoranda made between parties and sworn brokers. A leading distinction in evidence was also made between what was termed full proof, as where a fact was declared by two credible witnesses as of their own knowledge, or it was proved by a document or written paper, and *half proof*, as where it rested upon the positive declaration of knowledge of one witness only, under which latter head, as weak but assisting evidence, hearsay was allowed, which, in some instances, as in the case of certain dying declarations, was admitted to the force of full proof; and as the determining of a case upon the evidence of witnesses was left to the judges, very discriminating and nice distinctions were made in adjusting or weighing its relative force or value. (b).

When judgment was rendered against a defendant for a sum of money, time was given for payment, usually fourteen days for the discharge of one-half, and the remainder in a month. If at the expiration of that time he did not comply, application was made to the court and the schout, or usually the court messenger, went to the delinquent, and, exhibiting a copy of the sentence and his wand of office, which was a bunch of thorns, summoned him to make satisfaction within twenty-four hours. If at the expiration of that time the amount was not paid, the delinquent was again summoned to pay within twenty-four hours, which involved additional expense; and if, when that time expired, he was still in default, the messenger, in the presence of a schepen, took into custody the debtor's movable goods, which he detained for six days, within which time they might be redeemed on payment of the expenses. If they were not re-



magistrates do not seem to have been the enforcing authority. Stuyvesant and the clergy had combined to exclude all other sects but Calvinists. The measures were at first aimed only at the Dutch Non-Conformists, the Lutherans, who were forbidden to have a meeting house in New Amsterdam. When they proved intractable, Stuyvesant punished them by fines and imprisonment. A Lutheran minister who came from Holland to serve them was promptly banished; and when the Amsterdam Chamber of the West India Company rebuked the Governor "for his want of charity as well as for his want of judgment," and pointed out that there was "a needless preciseness" as to the formulary of baptism, which was the essential difference between the Calvinists and Lutherans, Stuyvesant centred his efforts on the suppression of other sects. He banished some Anabaptists of Flushing in 1656, and during succeeding years so persecuted Quakers, who hap-

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deemed, notice was then given by publicly announcing upon a Sunday, and upon a law day, that they would be sold, and that the next law or market day they were disposed of by auction. If it was necessary to levy upon or sell real estate, or what in the civil law is termed immovable property, a longer term was allowed, and greater formalities were required. The manner of selling it was peculiar. The officer lighted a candle, and the bidding went on while it was burning; and he who had offered the most at the extinction of the candle was declared the purchaser, which differed from the ordinary mode in a Dutch auction, where the public offer of the property is made at a price beyond its real value, which is gradually lowered until one of the company agrees to take it. (c).

The civil business of the court was large and varied; such as actions for the recovery of debts, which were generally cases of disputed accounts, or of misunderstandings between the parties, for in proof the probity and punctuality of the Dutch suits by creditors to enforce payments from delinquent debtors; formed but a small proportion in the general mass of this business. There were proceedings by attachments against the property of absconding debtors, or of non-residents or foreigners, on which security was required of the debtor intending to depart, or release the property from the attachment; actions to recover the possession of land, or to settle boundaries, a proceeding somewhat similar to the relief afforded by our courts of equity upon a confusion of boundaries; actions to recover damages for injuries to land or to personal property, or to recover specific personal property as in replevin, or its value as in trover.

Actions for freight, for seamen's wages, for rent, for breach of promise of marriage, where the performance of the contract was enforced by imprisonment; for separation between man and wife, in which case the



pened to touch at New Amsterdam on their way to Rhode Island, that the record would shamefully blot the pages of the journals of the Court of the Schout, Burgomasters and Schepens of New Amsterdam, if it could be shown that that municipal body abetted the Director-General in these fanatical excesses of authority.<sup>15</sup> It seems that the Director would deal with such grave cases himself, through his higher court, his Council.

There were many schepens courts in the province, and although, in general, in their being inferior courts, they followed the procedure of that at New Amsterdam, they do not seem to have had as wide jurisdiction as their High Mightinesses, the Schout, Burgomasters, and Schepens of New Amsterdam. The courts of the smaller towns could not provide schepens so well informed, or a schout so learned in the law, as those of the capital. Stuyvesant also had to be always mindful of the political situation, which was far different

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children were equally allotted to the parties, and the property divided, after the payment of debts (d) proceedings in bastardy cases, in which the male was required to give security for the support of the child, and in which both delinquents might be punished by fine or imprisonment. Actions for assault and battery, and for defamation, which were *quasi* criminal proceedings, punishable by fine, imprisonment or both, though the defamer was generally discharged upon making a solemn public recantation before the court, sometimes upon his knees, asking pardon of God and of the injured party. Pecuniary compensation, for injuries to person or character, could not be enforced; though cases occurred in which the defendant was discharged, it appearing that he had made compensation to the other party in money or goods. And, from the frequent application made to the courts for redress in cases of defamation, detraction would seem to have been a vice to which the inhabitants were particularly prone.

The court also acted as a Court of Admiralty, and as a Court of Probate, in taking proofs of last wills and testaments, and in appointing curators to take charge of the estates of widows and orphans. Application was made to Stuyvesant for liberty to establish an orphan house, similar to the celebrated institutions which exist throughout Holland. He did not think that such an establishment was necessary, but he afterwards assented to the appointment of orphan masters, and those officers acted in aid of the court. Some of its proceedings in the exercise of this branch of its jurisdiction will serve to illustrate how tenaciously the Dutch cling to old forms or legal ceremonies, as where a widow, to relieve herself from certain obligations, desired to renounce her husband's estate; it is in all such cases



among the inhabitants of Long Island than in New Amsterdam. The English settlers on Long Island were intriguing with the New England colonies, with a view of freeing themselves from Dutch authority; therefore, much caution was necessary in giving them even municipal jurisdiction. It must be confessed also that Stuyvesant's soul was grievously troubled at even the thought of the establishment of popular government. Therefore, whenever concessions in that direction were made by the Provincial Government, they were invariably by the pressure of persistent agitation. When the outside towns were given a degree of local government, they had little authority. The Schepens Courts of New Netherland outside New Amsterdam had, at the outset, only minor jurisdiction; they could try only petty criminal cases, and decide only civil suits that did not exceed fifty guilders. And Stuyvesant devised a controlling system which divided the province into judicial districts. He created a superior district court,

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recorded that the intestate's estate "has been kicked away by his wife with the foot," and that she has duly "laid the key on the coffin." (e). The court also exercised a peculiar jurisdiction, that of summoning parents or guardians before them who, without cause, withheld their assent to the marriage of their children or wards, and of compelling them to give it. (f). It also granted passports to strangers, or conferred on them the burgher right, a distinction which now, that it has ceased to be attended with any practical advantage, is still kept up in the custom of tendering or presenting the freedom of the city to strangers as a mark of respect.

It may not be uninteresting, moreover, to state that the origin of a fee bill, for regulating by a fixed and positive provision of law, the costs of attorneys and other public officers, is to be traced to Stuyvesant. On the 25th of January, 1658, he put forth what is known in Holland as a placard, that is, a proclamation or ordinance, emanating from some legislative or executive authority, having the force of law, by which he established a regular tariff of fees. In England the fees of attorneys and other officers of the court have generally been regulated by the court, and not by any public act. In New York, however, the fees of public officers has been a matter of public regulation from a very early period. Ten or twelve years after the restoration of the province to the English, they were regulated by an ordinance of the governor, and afterwards by acts of the General Assembly; and there is every reason to believe that the practice, especially as respects the fees of attorneys and officers of the court, was derived from the Dutch. (g). A copy of Stuyvesant's ordinance remains in the Records of the Burgomaster and Schepens; and, as the preamble



to which, up to a certain limit, appeal lay from the findings of the schepens' courts. The District Court was composed of magisterial delegates from each municipality in the district, a schout, who also acted as clerk, being assigned to each appellate court. The District Court was also to some extent a Court of Records. And an important power vested in it was the control of municipal expenditures, it having superintendence of all such municipal affairs as "the laying out of roads, the observance of the Sabbath, and the erection of churches and other public buildings" within the district.<sup>16</sup> In course of time, as the towns grew in population and power of agitation, full municipal rights were extorted from Stuyvesant; but these privileges were conferred reluctantly and through the force of circumstances which left the Director no alternative course that was practicable.

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to the document is of interest as a legal curiosity, we take the liberty to insert it:

"Whereas, the Director-General and Council of New Netherland have sufficient evidence from their own experience in certain bills of costs which have been exhibited to them, as well as by the remonstrances and complaints which have been presented to them by others, of the exactions of scriveners, notaries, clerks, and other licensed persons, in demanding and collecting from contending persons excessively large fees, and money, for writing for almost all sorts of instruments, to the manifest, yea, insufferable expense of judgments and judicial costs; some of whom are led by their covetousness and avarice so far as to be ashamed to make a bill or specify the fees they demand, but ask or extort a sum in gross. Therefore, to provide for the better and more easy administration of justice, the Director-General and Council do enact," and so forth; after which follows provisions requiring the licensing of the officer entitled to take the fees, the keeping of a record of all fees charged by them, and prohibiting champetry and other abuses. It is then provided that the officers enumerated shall serve the poor *gratis*, for God's sake, but may ask from the wealthy the fees specified. Each particular service is then enumerated in the manner of our former fee bills, with the number of stivers allowed for each. Among the provisions is the following entry:

"No drinking, treats, presents, gifts, or doucers shall be inserted in any bill or demanded."

and the ordinance concludes by directing that it shall be read once every year in the court, upon a day specified, to the officers enumerated, who were thereupon to be sworn faithfully to observe it; any officer being subject, for the violation of its provisions, to a fine of fifty guilders, or the loss of his office. (j).



In criminal cases the Schout prosecuted as plaintiff on behalf of the community. At his requisition, and upon the inspection by a magistrate of evidence sufficient to warrant a belief that an offence had been committed, the offender might be arrested or summoned, according to the discretion of the magistrate; though, where the culprit was detected in the actual perpetration of the deed, or where, in the judgment of the Schout, there was strong ground for suspicion against him, and, in his opinion, the public interest demanded it, he might direct his immediate arrest; but in all such cases the Schout was obliged to give notice of the arrest to the magistrate within twenty-four hours, who was thereupon bound to investigate the matter—a provision that practically dispensed with the necessity of the writ of *habeas corpus*, so familiar in the history of the English law. (k). Bail was allowed, except in cases of murder, rape, arson or treason. There were two modes of trying the prisoner; either publicly upon general evidence, which was the ordinary mode, or by examining him secretly in the presence of two schepens, in which written interrogatories were propounded to the prisoner, to which he was obliged to return categorical answers. The Dutch law then adhering to the general policy of the civil law, in respect to extorting confessions from offenders, and making use of the torture and of all those inquisitorial aids and appliances which have cast such a blemish upon the criminal jurisprudence of Europe. (m). The torture, however, was not used, except where the presumptive proof amounted almost to a certainty; and I have found but one case upon the records in which this cruel and unnecessary test was resorted to. Criminal prosecutions were not frequent, nor were the offenses generally of a grave character. The punishments were by fines, which were distributed in three equal parts: to the schout, to the poor, and to the court; by imprisonment, whipping, the pillory, banishment from the city or province, or death, which, however, could not be inflicted without the concurrence of the governor and his council. (n).—Justice Daly, in “State of Jurisprudence During the Dutch Period,” “History of the Bench and Bar of New York” (1897), from study in the following sources.

(a) “N. Y. Rec. of Burgomasters and Schepens,” I, 188, 231; II, 104, 176; III, 188; V, 190; VI, 474; VII, 180.

(b) *Ibid*, VII, VIII; Meyers’ “Institutions Judiciaries,” Chap. 14, 387; Van Leeuwen’s “Roman Dutch Law,” Book V, Chap. XIII to XX and XXIII.

(c) “Rec. N. Y. Burg. and Schep., I, 204, 250; V, 207, 576; Van Leeuwen, Book V, Chap. XXV.

(d) “Rec. N. Y. Burg. and Schep., IV, 1659. Rec. Mayor’s Court, I, 533.

(e) “Rec. N. Y. Burg. and Schep., II, 32.

(f) “*Ibidus*,” Vols. I to 6.

(g) Ordinance and Table of Fees in first ed. of “Colonial Laws,” by Bradford, 1694; “Charter Book and Acts of Assembly of 1683,” in office of Secretary of State; “Laws of 1709,” ordinance regulating fees.

(j) Placards of Stuyvesant in “Rec. N. Y. Burg. and Schep.”

(k) “Ordinances of Amsterdam,” p. 46 and seq. Ed. of 1644.

(m) “*Practique et encheridon des causes Criminills Louvain*,” 1555; Van Leeuwen, Book V, Chap. 27, 28.



(n) "Records N. Y. Burg. and Schep., IV, 141.

6. If to-day an action is brought before our judiciary, it is fought as it were inch by inch by the opposing counsel. The judgment when obtained is enforced to the uttermost farthing. The cause may go to a referee, but his duties are simply those as it were of an umpire. Nor does our law make any account of the defendant, unless the defendant looks out for himself. It was different in old New Amsterdam; the Court was of so Arcadian a character, so utterly pledged to the eccentric notion that all men are somehow brothers, or if not that they ought to be, that it was loath to exercise its judicial authority; to enforce the execution of justice. It was a Court of conciliation, a begetter of harmony, which from its very pomposity and ceremonialism was all the more potent as authority to compel the resumption of friendly relations. If a case were brought before it, each party stated his case to the best of his ability and then the judges rendered their decision on the facts, or appointed arbitrators to bring the opponents together. These arbitrators were appointed to review the matter thoroughly and agree upon some basis of compromise, which was usually accepted by both parties.—James Walton Brooks, in the "History of the Court of Common Pleas" (1896).

7. Documents of Stuyvesant's Council, in "N. Y. Record of Burgomasters and Schepens," Feb. 26, 1654.

8. Resolved, ratified and concluded in Court, that the previously enacted Ordinance of Schout, Burgomasters and Schepens on the subject of appearance at and absence from the ordinary, extraordinary and other meetings shall be strictly obeyed and observed conformably to its tenor; to wit: Whoever comes half an hour too late shall pay a fine of ten stivers (12 cents). Whoever comes one hour late twenty stiv.: Whoever is absent altogether forty stiv.—"Records of New Amsterdam," III, 162.

9. A salary of three hundred and fifty guilders (\$140) was fixed for each burgomaster, and two hundred and fifty guilders (\$100) for each schepen.—Chester's "Legal and Judicial History of New York," Vol. I, 64.

10. *Ibid.* Vol. I, 65.

11. In the beginning of the year 1657 an attempt was made to introduce one of those caste distinctions of the Netherlands, which gave to the Dutch Republic marked peculiarities, as contrasted with the English commonwealth. The "burgher right" was then tendered to New Amsterdam. This right conferred important legal, commercial and political privileges. Distinctions were introduced among the burghers of Amsterdam, the parent city, in 1652, by dividing them into two classes, the Great and Small. The lesser citizenship only conveyed freedom of trade, and the privilege of being received into the respective guilds. The great burghers, who only could hold office, became such by official distinction, inheritance and purchase. This odious legalized system of an aristocratic official caste was formally introduced into New Amsterdam February 1st, 1657. To the honor of the Dutch founders of this imperial commonwealth be it said, the attempt to sell the Great Burgher right failed. One year later, Feb. 1, 1658, when the burghers were first permitted to make double nominations for magistrates, Stuyvesant was compelled to invest some of the more prominent citizens with the right, in order to fill the offices. He, however, obtained thereby the power to exclude from the privilege of holding office whoever he saw fit, unless they paid for it.—Werner, in "New York Civil List," 1888.



12. Whereas, Walewyn van der Veen insulted the subaltern bench of justice of this City and spoke calumniously of the same, touching which the officer making this demand and Burgomasters and Schepens having heard the demand and proof of the Schout adjudge that Walewyn van der Veen for his committed insult shall here beg forgiveness, with uncovered head, of God, Justice and the Court, and moreover pay as a fine the sum of one hundred and ninety guilders to be duly applied, with costs, and in case of refusal he shall go immediately into confinement.—Chester's "Legal and Judicial History of New York," Vol. I, 78.

13. The Director-General and Council, appreciating their office authority and commission better than others, hereby notify the Burgomasters and Schepens that the establishing of an Inferior Court of Justice under the name and title of Schout, Bourgomasters and Schepens, or Commissioners, does in no wise infringe on or diminish the power and authority of the interdicts, especially those which tend to the glory of God, the best interests of the inhabitants or will prevent more sins, scandals, debaucheries and crimes, and properly correct, fine and punish obstinate transactions. What is solely the qualification of Schout, Burgomasters and Schepens, and for what purpose they are appointed, appear sufficiently from the Instruction given to them, by which they have to abide and conform themselves, without henceforth troubling or tormenting the Director-General individually about any enacted ordinance, law, or order, penalty or punishment issued or executed against and concerning the contraveners thereof by previous resolution of the Director-General and Council—(This was prompted by dismissal of prisoners brought before Schepens Court in 1654, charged with hilarious conduct, despite order of Director).—See "Records of New Amsterdam," I, 172.

14. The instructions read as follows:

1. In the first place, the Sheriff shall, as the Director-General and Council's guardian of the law in the district of the City of New Amsterdam, preserve, protect and maintain, to the best of his knowledge and ability, the preëminences and immunities of the privileged West India Company, in as far as these have been delegated by previous Instruction to the Board of Burgomasters and Schepens; without any dissimulation, or regard for any private favor or displeasure.

2. In the quality aforesaid, he shall convoke the meetings of the Burgomasters and Schepens and preside thereat, also propose all matters which shall be brought there for deliberation, collect the Votes and resolve according to the plurality thereof.

3. He shall, *ex officio*, prosecute all contraveners, defrauders and transgressors, of any Placards, Laws, Statutes and Ordinances which are already made and published, or shall hereafter be enacted and made public, as far as those are amenable before the Court of Burgomasters and Schepens, and with this understanding that, having entered this suit against the aforesaid Contraveners, he shall immediately rise, and await the judgment of Burgomasters and Schepens, who being prepared shall also, on his motion pronounce the same.

4. And in order that he may well and regularly institute his complaint, the Sheriff, before entering his action or arresting any person, shall pertinently inform himself of the crime of which he shall accuse him, without



his being empowered to arrest any one on the aforesaid information, unless the offence be committed in his presence.

5. He shall take all his information in the presence of two members of the Board of Burgomasters and Schepens if the case shall permit it, or otherwise in the presence of two discreet persons who, with the Secretary or his deputy shall sign the aforesaid information.

6. Which aforesaid Secretary with the Court Messenger are expressly commanded to assist and be serving unto the Sheriff in whatever relates to their respective offices.

7. He shall take care in collecting and preparing informations to act impartially, and to bring the truth as clear and naked as possible to light, noting to that end all circumstances which in any way deserve consideration and appertain to the case.

8. Item. The aforesaid Sheriff, on learning or being informed that any persons have injured each other, or quarrelled, shall have power to command the said individuals, either personally or by the court messenger, or his deputy, to observe the peace, and to forbid them committing any assault, on pain of arbitrary correction at the discretion of the Burgomasters and Schepens.

9. He shall not have power to compound with any person for their committed offences, except with the knowledge of the Burgomasters and Schepens.

10. He shall take care that all Judgments pronounced by the Burgomasters and Schepens, and which are not appealed from, shall be executed conformably to the above mentioned Instruction given to the same, according to the style and custom of Fatherland, and especially the city of Amsterdam.

11. In like manner, that authentic copies of all the Judgments, Orders, Actes and Resolution to be adopted by the aforesaid Burgomasters and Schepens shall be communicated once every year to the Director-General and the Council of New Netherland.

12. And in case he receives any information or statement of any offences which from their nature, or on account of the offending person are not subject to his complaint, he shall be bound forthwith to communicate the same to the Fiscal (Schout-Fiscal) without taking any information himself, much less arresting the offender, unless in actual aggression to prevent greater mischief, or hinder flight in consequence of the enormity of the crime.

13. Which being done, he shall as before surrender without any delay the apprehended person with the information taken to the Fiscal, to be proceeded against by him in due form as circumstances demand.

14. In order that the aforesaid Sheriff shall be the more encouraged hereunto, he shall enjoy, etc.

15. Should the Sheriff violate any of these Articles he shall be prosecuted on the complaint of the Fiscal before the Director and Council, to be punished according to the nature of the case.—“Dutch Records, Letter V,” 1652-63.

15. The next year (1657) a ship arrived at New Amsterdam having on board several of the “cursed sect of heretics,” as Quakers were called in the Massachusetts statute. Some of this company had been banished from Boston the year before, and were now on their way to Rhode Island, “where



all kinds of scum dwell," wrote the Dominies Megapolensis and Drisius, "for it is nothing else than a sink of New England." Among them were two women . . . Dorothy Waugh and Mary Witherhead. . . . When they landed at New Amsterdam, they . . . asked neither for a place of public worship, nor for permission to preach, but, going from street to street through the town, they announced the new doctrine and declaimed against the steeple-houses, the hireling priesthood, and their pernicious teachings. . . . But the preaching nevertheless was a defiance of authority and law which the Dutch Director was as little disposed as any Puritan governor to brook. The women were seized and thrust into separate prisons—"miry dungeons," they are called—infested with vermin. After eight days' endurance of this punishment, their hands were tied behind them and they were sent back to their ship, to finish their voyage to Rhode Island.

With another of the company, Robert Hodgson (or Hodshone), it fared still worse. He proposed to remain in New Netherland, and was welcomed at Heemstede by a few of his own way of thinking, with whom he soon held a meeting. He was arrested, and word sent to Stuyvesant, who ordered him to be brought to New Amsterdam. . . . Tied to the tail of a cart in which rode two young women, one with a baby at her breast, offenders like himself, and under a guard of soldiers, he was driven, pinioned, in the night time and through the woods, "whereby he was much torn and abused" to the city. On his arrival, the gentle Friend was led by a rope, like some dangerous criminal, to the prison, "a filthy place full of vermin."

. . . Hodshone's principal accuser seems to have been Captain Willett (of Massachusetts) associate of Standish. He "had much incensed the governor against the prisoner, it is said, though it is easy to conceive that Stuyvesant's rage would need no prompting in an encounter with one of that sect who feared no wrath but the divine wrath, and respected no authority but the authority of God. A prisoner who would not remove his hat in the presence of the court would seem to such a judge as the Director as hardly deserving of other consideration than that hat and head should come off together.

The forms of law were of little moment with an offender of this kind. No defence was permitted him, and his sentence was read to him only in Dutch. Its meaning, however, was not long left in doubt; he was to pay a fine of six hundred guilders; for two years his home was to be a loathsome dungeon; his days were to be passed at hard labor, with a negro, chained to a barrow. When he pleaded that he was never brought up to nor used to such work, a negro beat him with a tarred four-inch rope till, as the narrative says, "Robert fell down." "Thus he was kept all that day in the heat of the sun, chained to the wheelbarrow, his body being much bruised and swelled with the blows, and he, kept without food, grew very faint and sat upon the ground with his mind retired to the Lord and resigned to his will, whereby he found himself supported.

So resigned, he endured such punishment for three days. . . . Again he was taken before the Director, less able than ever to work, as little disposed as ever to submission.

"What law have I broken?" he demanded. He should work, he was told, or be whipped every day. Again he was chained to the barrow and threatened with even worse punishment if he dared to speak to any one. But the threats did not move him: "He did not forbear to speak to some that



came to him so as he thought meet and convenient." The worse punishment followed: hung up by the hands, his feet tied to a log, his bare back was torn with rods till he became almost insensible to torture. . . . Many even among the Dutch were moved with pity. . . .

When sentence was first pronounced upon him it was displeasing to many of the Dutch, as "did appear by the shaking of their heads." More scandalous and inhuman it seemed to many of them when, after the cruel and repeated punishment of one whose sole offence was obedience to his own conscience, he was again led out, still chained to his barrow, to labor upon the public highway. . . . Among those who exerted themselves on his behalf was the widow Anna Bayard, a sister of the Director. She was full of compassion, perhaps indignation, and at her prayers and expostulations her stern brother relented. Hodshone was released at length, and the fine remitted, but he was banished from the colony—Sewell's "History of the Quakers: An Abstract of the Sufferings of the People Called Quakers for the Testimony of a Good Conscience." London, 1733.

16. Not long after the organization of this court (New Amsterdam) by Stuyvesant, courts of the same popular character were established in several towns on Long Island, and these received powers similar to those granted to that in New Amsterdam. Before this time, Brueckelen had a court of schepens which was dependent on the court at Fort Amsterdam. Now her magistrates were increased from two to four, and Midwout (Flatbush) obtained the right to three schepens, while to Amersfoort (Flatlands) two schepens were granted. In all matters relating to police, peace and security in their several towns—which extended in criminal matters over cases of fighting, threatening, etc.—these courts had separate jurisdiction. Offences of a graver character were reported to the director and council at Fort Amsterdam. In civil matters these courts could take cognizance of suits to the amount of fifty guilders. In excess of this sum to a further definite amount, an appeal lay to a superior district court. The latter court was composed of magistrates delegates from each town court, and a schout, who acted also as a clerk. To this district court was also committed the superintendence of such affairs as were of common interest to the several towns represented in it, that is the laying out of roads, the observance of the Sabbath, and the erection of churches, schools, and other public buildings. It was also to a certain extent a court of records.

David Provoost, who had been commissioner of Fort Good Hope, on the Connecticut River, was the first schout, or sheriff, of this district court. In January, 1656, he was succeeded by Pieter Tonneman, who acted until August, 1660, when Adriaen Hegeman was appointed. The salary of the office was two hundred guilders a year, with one-half of the civil fines imposed by the court, and one-third of the criminal fines levied by each town, together with certain fees as clerk for entries and transcripts. In 1661, courts similar to those in Brueckelen, Midwout and Amersfoort were established at Bostwyck (Bushwick) and at New Utrecht. These towns were then formed into a district which was called the "district of the five Dutch towns." The several town courts still continued to exercise their independent jurisdiction, but there was one schout for the district, and he resided in Brueckelen.

Courts were established, by virtue of grants from Stuyvesant, among the English settlers in Canorasset, or Rutsdorp (Jamaica), in 1656, and in

Middleburg (Newtown) in 1659. In 1652 Stuyvesant established a court in Beverwyck (Albany), independent of the patroon's Court of Rensselaerwyck.

The courts which have thus been enumerated and described, including the patroon courts and the appellate court in New Amsterdam, which was composed of the governor and council, constituted the judicial tribunals of New Netherland until the colony passed into the hands of the English.—Chester's "Legal and Judicial History of New York," Vol. I, 86.







## CHAPTER XII.

### THE FIRST CONVENTION AND ITS RESULT.\*

Early in 1653 the people of New Amsterdam looked forward hopefully to the future which, so far as local government went, they thought, would be in their own keeping. After three years of agitation and remonstrance, Van der Donck had brought back to New Amsterdam the instructions of the States General, through the West India Company, to Director-General Stuyvesant to institute in New Netherland a system of popular government in local affairs like that then practiced in the municipalities of the home provinces. Burgher government was to be constituted by elective means, indicating that henceforth the people, through their elected representatives—burgomasters and schepens—would be able to curb inclinations to arbitrary rule by their Governor. Alas! the instructions to Stuyvesant were ambiguous; and he was, before all else, the agent of a commercial company, whose primary object was the making of money. So, although he bowed to the authority of the States General and, much against his will, brought New Amsterdam under burgher government on February 2, 1653, Stuyvesant gladly grasped the opportunity of nullifying the triumph of the people, for a time, by appointing the burgomasters and schepens himself, instead of permitting the new order to come into effect by elective means. Moreover, he went directly against Dutch practice of that time in permitting the schout-fiscal to also hold the office of city schout.

There was keen disappointment among the thinking people. Their expectation that a new and brighter era would dawn

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\*AUTHORITIES—Underhill's "Manifesto"; O'Callaghan's "History of New Netherland"; "Hartford Records"; Bryant's "History of the United States"; Werner's "New York Civil List," 1888 ed.; Hawthorne's "History of the United States"; Chester's "Legal and Judicial History of New York."



with the incorporation of New Amsterdam passed when they read the Governor's placard. They demurred more against the method of establishing the burgher government than they did against the men appointed. All the burgomasters and schepens were of reasonably good record, and might be expected to side with the people against executive tyranny; and they showed where their sympathies were when they all emphatically protested against the presence of Cornelis van Tienhoven, as schout, in the schepens' court. He was known to be but the mouthpiece of Stuyvesant, and his private life was such that one would not look for scrupulous justice in a court over which he presided. However, Stuyvesant had declared his will, so Van Tienhoven became schout. Fortunately, he was not given the full status of a city schout; he was not permitted to preside, nor was he given a vote. Nevertheless, the confidence of the people was shaken, and popular outcry against this irregular appointment was heard even in Holland. The citizens of New Amsterdam would no doubt have taken a more determined stand against him had not another much more absorbing and vital question then been uppermost in the minds of all classes in the province. England was at war with Holland, and the little province of New Netherland stood in imminent danger of being absorbed by the powerful New England colonies, if allied against New Netherland.

Officially, Stuyvesant assured Virginia and the New England colonies that the feeling of the Dutch of America toward their English neighbors was cordial; and he hoped that the friendly relations would not be interrupted. Nevertheless, rumors reached New England that the Dutch were urging the Indians to attack the English settlements, and even though leading Indian chieftains flatly denied the existence of any plot, the commissioners of the United Colonies of New England were apprehensive. Indeed, they recommended war against the Dutch. Fortunately for New Netherland, Massachusetts would not contribute her quota for such a war, and





PETER STUYVESANT





the other colonies were not strong enough for independent action.

So the situation cleared, Stuyvesant profiting by the scare. John Underhill, of Long Island, was lodged in jail at New Amsterdam for a while, "for asserting within their own towns that the Dutch were in league with the Indians against the English"; and the Governor had also been able to get the burgher government of New Amsterdam to pass, as one of its first measures an ordinance providing ways and means of completing the fortifications at New Amsterdam. The passing of the English scare was followed by complication with John Underhill, who had been released.<sup>1</sup> And after he had been again arrested and again released, this time being banished, he succeeded in so arousing the sympathy of the government of Rhode Island with the English of Long Island, oppressed "by the cruell tirannie of the Dutch power at the Manathoes," that the General Assembly of Rhode Island resolved to declare war against New Netherland, and commission John Underhill as commander of the land forces, "to bring the Dutch to conformitie to the Commonwealth of England."<sup>2</sup> His campaign lasted for two months, during

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1. In troubled waters no head was so sure to come to the surface as that of John Underhill. . . . If New England was not ready for a war with the Dutch, that was no reason why John Underhill should not declare it on his own account. He hoisted the colors of the Parliament at Flushing and Heemstede; issued a manifesto in which great crimes, such as the unlawful imposition of taxes, the appointment of magistrates over the people without election, the violation of conscience, the conspiring with the Indians to murder the English, the hampering of trade, and other acts of tyranny, even to the striking an old gentleman of his Council with a cane, were charged upon the administration of Peter Stuyvesant; and both Dutch and English were called upon "to throw off this tyrannical yoke." It shows how far Stuyvesant was from wishing to provoke a collision with the English that, instead of hanging Underhill for this second offense, he only banished him.— See O'Callaghan's "History of New Netherland," Vol. II, p. 225, for full text of Underhill's manifesto.

2. Underhill took the field. Marching to Fort Good Hope on the Connecticut, once held by the Dutch, but now empty, he posted upon the door a notice that he "Io. Underhill (did) seaze upon this hous and lands thereunto belonging, as Dutch goods claymed by the West India Company,



which he succeeded, with his army of twenty warriors, in capturing the untenanted Fort Good Hope on the Connecticut. But certain maritime operations by the commanders of Rhode Island's navy developed not much greater magnitude than those of the land forces, so Stuyvesant was not helped, in his internal troubles, much thereby.

The war was ended before the fortifications of New Amsterdam had been completed, and the citizens, no longer afraid of an attack by the English, refused to be further taxed to complete the work. And Stuyvesant found that the burghers and schepens of New Amsterdam sided with the people. The latter half of the year 1653, as a consequence, witnessed some animated scenes in the capital. If the people of New Amsterdam, who would benefit most by the fortifications, were unwilling to contribute toward their completion, how much more reluctant must have been the citizens of outlying parts of New Netherland, who were far from Fort Manhattan, and were ever dreading Indian warfare.

The Long Island towns were the most rebellious. It is true they were peopled largely by English settlers, but they were also the most exposed to attack by Indians and by certain "gangs of lawless men," who took whatever they fancied from the farmers. In October, a convention of four English towns on Long Island—Hempstead, Gravesend, Flushing and Middleburgh (Newtown)—was held, to consider what common action they should take. It was resolved to call another convention, to meet on November 25, in the Stadt Huys at New Amsterdam, to further consider measures that were necessary "for the welfare of the country and its inhabitants, and

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in Amsterdam, enemies of the Commonweal of England." Having done this much for the Commonwealth and the conquest of New Netherland, the Commander-in-Chief of the land forces of Rhode Island disbanded his army—of twenty volunteers. The conquered territory—about thirty acres—he sold, on his own account, first to one man for twenty pounds sterling, and two months later to another, giving a deed to each.—Hartford Records.



to determine on some wise and salutary measures to arrest these robberies." The delegates duly assembled in New Amsterdam, much to the perturbation of the Governor, who probably was not in one of his most amiable moods, for on that very day, after a long fight with the burgomasters and schepens of New Amsterdam, he had surrendered to them his assumed prerogative of imposing and applying excise duties in the municipality, at least on beer and wine, though he consoled himself, perhaps, by imposing an additional provincial duty on wines and distilled liquors, which, he said, "are used in this country in the greatest profusion." As to the convention, he expressed himself in emphatic words. It was irregular; illegal; he had not authorized the gathering; and no citizens could assemble for political purposes without his sanction, properly and regularly had. This convention in the Stadt Huys, in fact, "smelt of rebellion, of contempt of his high authority and commission."<sup>3</sup> The delegates demurred

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3. The discontent on Long Island, both among Dutch and English, took a formidable shape. Alarmed at the continuance of Indian hostilities, and disgusted at the want of prosperity generally, which they attributed to the arbitrary and unwise rule of the Director, they united with the popular party in opposition to his administration. A meeting of delegates under the leadership of two Englishmen, George Baxter and James Hubbard, assembled at the Stadt Huys in New Amsterdam in November. On the plea of devising some means for the general welfare, Stuyvesant had been consulted with regard to this meeting, and two of his Council, La Montagne and Van Werckhoven, took seats in it, as the representatives of that body and the Director-General. But the presence of Van Werckhoven especially was objected to. The delegates of the towns declared they would have nothing to do with him, and that neither the Director-General nor any of his Council would be permitted to preside over the convention. As the object of the meeting was to provide for the common defence, they were willing to unite with the municipal government of New Amsterdam—which was also represented in the body—and to continue under the rule of the States-General and the Company; but they would not submit to the Director and Council who could not protect them. "We are compelled," they said, "to provide against our own ruin and destruction, and therefore we will not pay any more taxes."—Bryant's "History of U. S.," Vol. II, Chap. VII.

3. Protection in return for taxation is one of the simplest of propositions. . . . The towns went still further. They made propositions for a "firmer union" with the magistrates of the city, who replied that they must first consult with the Director and Council. Stuyvesant responded that he



when Stuyvesant assigned two of his Council to sit in the convention; which increased the chagrin of the Governor. Nevertheless, when he was informed that the delegates were determined to hold even another meeting, and to expand the scope of the convention, admitting delegates from the four Dutch towns also, and that they would meet whether he sanctioned the gathering or did not, Stuyvesant probably recognized that the popular agitation was stronger than he could combat by arbitrary means. At all events, he recognized the assembly by promising to formally convene delegates for the December gathering they had decided to hold. Finding some satisfaction in the fact that at this convention the Dutch delegates could outvote the English, the Governor issued writs on December 8, for the assembling of delegates on December 10.

Accordingly, nineteen representatives gathered. Ten were Dutchmen from the four Dutch towns—New Amsterdam, Breuckelen, Amersfoort (Flatlands) and Midwout (Flatbush); and the four English towns of Flushing, Middleburgh or Newtown, Heemstede and Gravesend, sent nine English delegates. Among them was George Baxter, a former English secretary of New Netherland. He had drafted a remonstrance, which was adopted, and delivered to Stuyvesant. In fundamentals, the remonstrance was against taxation without representation, which the delegates believed could not be genuinely attained by an appointive system.<sup>4</sup> Stuyvesant, in

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had no objection to their uniting with the English towns, and stated that "as they could not out-vote the latter now, it was his intention to grant, at the next election, courts of justice to the villages of Amersfoot (Flatlands), Breukelen and Midwout, so as to possess with Fort Orange, on all future occasions, an equal number of votes."—Werner, in "New York Civil List," 1888 ed., p. 38.

4. The opening sentence is significant. "We acknowledge," it reads, "a paternal government which God and Nature have established in the world . . . to which we consider ourselves bound by His Word, and therefore submit." But the remonstrants contended that "It is contrary to the first intentions and genuine principles of every well-regulated government, that one or more men should arrogate to themselves the exclusive power to dispose at will, of the life and property of any individual; and this by virtue,

reply, defended the appointive system. "He would not permit the election of magistrates (to) be left to the rabble." "Your prayer is extravagant," he said, "you might as well claim to send delegates to the Assembly of their High Mightinesses themselves. Directors will never make themselves responsible to subjects."

But the convention continued in session, and on December 13 defended their action by an appeal to the "law of Nature," by which all men might "associate and convene together for the protection of their liberty and their property." This brought upon them the wrath of the hot-tempered Governor. Magistrates alone, and "not all men," he declared, are authorized to assemble to discuss public questions. "We derive our authority from God and the Company, not from a few ignorant subjects, and we alone can call the inhabitants together," Stuyvesant would have them realize. "Such manners and forms of meetings, such insults, unprovoked affronts and contempt of the supreme authority, the Director and Council were bound to resist, yea to punish," were almost his last words to the delegates. He ordered the latter to disperse forthwith, "on pain of an arbitrary correction."<sup>5</sup> And he wrote to the

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or under pretense, of a law or order which he might fabricate, without the consent, knowledge or approbation of the whole body, their agents or representatives. Hence the enactment in manner aforesaid of new laws, affecting the commonalty, their lives and property, which is contrary to the granted privileges of the Netherlands government, and odious to every free-born man; and principally so to those whom God has placed under a free state, in newly settled lands, who are entitled to claim laws not transcending but resembling, as near as possible, those of Netherland. We humbly submit that it is one of our privileges, that our consent, or that of our representatives, is necessarily required in the enactment of such laws and orders." The remonstrance further recited that officers and magistrates were appointed in many places contrary to the law of the Netherlands, and several without the consent or nomination of the people; also that obscure laws enacted "without the approbation of the country, by the authority alone of the Director and Council, remain obligatory."

5. "The old laws will stand. Directors and Council only shall be the lawmakers; never will they make themselves responsible to the people. As to officers of government, were their election left to the rabble, we should



Dutch towns, urging them to send no delegates to any later conventions.

There was, however, still one course open to the delegates. They forwarded a remonstrance to the Amsterdam Chamber.<sup>6</sup> Le Bleeuw being chosen as the bearer of this appeal to the West India Company. Alas! He was destined to find the attitude of the Company unsympathetic. Indeed, he was forbidden to return to New Amsterdam, and the directors censured Stuyvesant for lack of vigor in handling the "ring-leaders of the gang."<sup>7</sup> They declared it to be "the height of presumption in the people to protest against the government."

However, out of all this agitation, a small but definite ad-

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have thieves on horseback and honest men on foot." And, with that, we may imagine, the Governor stamped his wooden toe.

The people shrugged their shoulders. "We aim but at the general good," said they. "All men have a natural right to constitute society, and to assemble to protect their liberties and property."

"I declare this assembly dissolved," Peter retorted. "Assemble again at your peril! The authority which rules you is derived not from the whim of a few ignorant malcontents."—Hawthorne's "History of United States," Vol. I, p. 114.

6. In substance, this petition read:

"The States General of the United Provinces are our liege lords. We submit to the laws of the United Provinces; and our rights and privileges ought to be in harmony with those of the Fatherland, for we are a province of the State, and not a subjugated people. We who have come together from various parts of the world, and are a blended community of various lineage, who have at our expense, exchanged our native lands for the protection of the United Provinces; we, who have transformed the wilderness into fruitful farms, demand that no new laws shall be enacted without the consent of the people, that none shall be appointed to office without the approbation of the people, and that obscure and obsolete laws shall never be revived."

7. . . . the West India Company spluttered with indignation. "The people be d——d!" was the sense of their message. "Let them no longer delude themselves with the fantasy that taxes require their assent."—Hawthorne's "History of United States," Vol. I, 114.

7. The directors wrote to Stuyvesant that the complaints of the citizens was unreasonable, and that they had nothing to object to in his administration of affairs, except, indeed, that he was too lenient in his dealings with these seditious persons; that he "ought to have acted with more vigor against the ringleaders of the gang, and not have condescended to answer protests with protests." They commanded him now to punish them as they deserved, and especially those delegates from Gravesend, the Englishmen Baxter and Hubbard.—Bryant's "History of United States," Vol. II, 150.



vantage did come to the people.<sup>8</sup> Stuyvesant was instructed to extend the system of local magistracies. He was also ordered to appoint another than the schout-fiscal of the province to be the city schout of New Amsterdam. From time to time, therefore, Stuyvesant established burgher government in other settlements, but was still able to keep the city schoutship in his own hands, for Kuyter, whom he had appointed to the New Amsterdam court, was murdered by Indians before he could take office; hence, Schout-Fiscal van Tienhoven continued as city schout, to the end of his term, his successor as fiscal also acting as city schout until 1660, when the offices were finally separated.

As to the incorporation of the towns, or the granting of some measure of local government in the inferior courts established, it appears that Breuckelen Court of Schepens was enlarged from a bench of two schepens to one of four schepens in 1654<sup>8a</sup>; Midwout (Flatbush) was made a municipality with

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Baxter and Hubbard escaped to New England, but were again in Gravesend two months later, and were then arrested actually as they were raising the English flag and reading a proclamation, "declaring Gravesend to be subject to the laws of the Republic of England." They were imprisoned for many months.

8. The December Convention was afterward held to be illegal by the Director, on the ground that these villages (Amersfoort, Breukelen and Midwout) did not have courts, which could alone legally appoint delegates. There is no reason to doubt the sincerity of the Director in stating (that it was his intention to grant the villages courts of justice at the next election) this to be his purpose, particularly as he did subsequently grant courts of justice to the villages named. . . . The concession of local government, however, was extorted from the Director by the Conventions of 1653.—Werner, in the "New York Civil List and Constitutional History of the Colony and State of New York," 1888 ed., p. 38.

8a. Director-General Kieft, in 1646, was informed that the inhabitants (of Brooklyn) had organized a municipality at their own expense, to which they had given the name of Breuckelen after the village on the Vecht in their home province of Utrecht. He indorsed their proceedings and gave them the municipal privileges they asked in a proclamation issued in June of that year. They were to elect two schepens, with full judicial powers as at home. . . . In 1654 Governor Stuyvesant gave Breuckelen and the adjacent towns of Midwout and Amersfoot a larger number of schepens.—See "History of Long Island," (1925), p. 50-51.



right to a court of three schepens; and Amersfoort was accorded like status in the same year. In 1661 Boswyck (Bushwick) and New Utrecht were added to the Dutch towns on Long Island which were given burgher government. They were grouped in one district, known as "the five Dutch towns," and served by one schout, who lived in Breuckelen and attended court sessions in each of the towns. New Haarlem was accorded local government in 1660, and Bergen, the first town in New Jersey, received recognition in 1661. To the English towns on Long Island were added Jamaica (then known as Rutsdorp), and Newtown (or Middleburgh), the former organizing its first court of schepens in 1656, and the latter in 1659. Before Dutch rule finally passed from New Netherland, by the Treaty of Westminster, in 1674, inferior courts were in operation in the following towns and villages outside of New Amsterdam: Fort Orange, Willemstadt, Schenectady, Wiltwyck, Swaenenburgh, Hurley, Marbletown, Breuckelen, Midwout, Amersfoort, New Utrecht, Boswyck, Middleburgh, Flushing, Hempstead, Rutsdorp, Oyster Bay, Huntington, Seatacot, Southampton, Easthampton, Southold, Haarlem, Westchester, Mamaroneck, Fordham, Eastchester, Staten Island.

Thus, out of the seemingly unsuccessful convention, so arbitrarily dissolved by Stuyvesant, in 1653, grew the seed of popular government in New York. "In these, the closing days of the years 1653, there dropped from the wide-spreading branches of the ancient Aryan oak a wonderfully symmetrical acorn; and from this acorn there sprang the beautiful American oak under which we are gathered."<sup>9</sup> Certain indications that it was growing are to be found in the political changes in New Netherland in the last decade of Stuyvesant's administration.<sup>10</sup> And despotism was finally given its deserts in

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9. Werner, in "New York Civil List," 1888 Ed., p. 40.

10. The time had now come to disintegrate the feudal shell in which the seeds of liberty in New Netherland were enclosed, in order that they might



New Netherland as it has ever been in the evolution of civilization.<sup>11</sup> When a British fleet appeared off New Amsterdam, in August, 1664, and demanded the surrender of the fort, the Governor thought of his "subjects," the people of New Netherland. He sent for all military help that was possible from Fort Orange, and appealed to the farmers to rally to the defence of the capital. Fort Orange ignored the requisition,

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germinate and freedom have a chance to grow. Charles II landed at Dover May 26, 1660. Connecticut was consolidated in April, 1662, under a charter confirming its established system. The English towns on the western end of Long Island, in 1663, entered into negotiations with the view to submission to its government, and a descent was made on Midwout (Flatbush), to compel its inhabitants to unite in a war against Mannhattans. This led to a convention of delegates appointed by the magistrates of the loyal towns, which met at New Amsterdam July 6, 1663, and engaged to maintain an armed force for public protection. Another convention assembled November 1st, pursuant to a call of Director Stuyvesant, made at the request of the magistrates of New Amsterdam, which addressed a remonstrance to the Amsterdam directors, setting forth the imperiled condition of the province, arising from the wars with the Indians and the English. Stuyvesant, on the 15th, accepted the terms of Connecticut, by which Westchester was ceded to it, and the English towns were left to themselves. These towns now entered into a "Combination" to manage their own affairs, and elected John Scott as their President. On the 27th of February, the sheriffs and magistrates of the Dutch towns assembled at Midwout and adopted a remonstrance to the Amsterdam directors, setting forth the outrages committed by Scott. At the request of the magistrates of New Amsterdam a General Assembly of delegates for all the towns and colonies was now called. This provincial diet was convened on the plan established by the Provisional Order of 1650, and it met on the 10th of April, 1664. The Director stated that the West India Company had expended 1,200,000 guilders in the government of the province, over and above the revenues it had received therefrom, and asked that supplies be voted for the general defence. This was refused, and then the Diet adjourned for one week, to consider the propriety of again appealing to the home government. Meantime, a military force arrived, with instructions to check the English, reduce the revolted villages and replace the removed magistrates; but it was utterly inadequate for the purpose. When the Diet reassembled, therefore, it advised that peace be made with the Indians, and decided that it would be useless to enforce the orders of the Amsterdam directors over the English towns. Connecticut therefore extended its authority over them, and in September Stuyvesant surrendered to Richard Nicolls, deputy of the Duke of York, who encouraged the people to believe that their liberties were to be at least as great as those enjoyed in New England.—*Ibid*, pp. 44-45.

11. "Let them no longer delude themselves with the fantasy that taxes require their assent" (replied the West India Company directors in 1654). With that they dismissed the matter from their minds. Yet even then the



and the farmers refused to come. All he could muster were about one hundred soldiers, the garrison at New Amsterdam, disreputable and of mean purpose. They were not loyal to Stuyvesant, nor to their own countrymen, the Dutch. They looked forward hopefully to the confusion which would attend the surrender. "Now we hope," they cried, "to pepper those devilish traders who have so long salted us; we know where booty is to be found, and where the young women live who wear gold chains." Stuyvesant was forsaken even by his son, who was among that "tumultuous assembly" of citizens of New Amsterdam who met in Stadt Huys, and signed a remonstrance, demanding the surrender of the city by Stuyvesant. So, on Monday morning, the 8th of September, 1664, there marched out of Fort Manhattan, on the Beaver Street side, "at the head of the poltroons who knew where the young women lived who wore gold chains, the stern old wooden-legged soldier who would rather have been carried out a corpse to his grave." With his passing the feudal system of government in New York expired. It cannot be stated, how-

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Writing was on the wall. The flouted people were ripe to welcome England; and England, in the shape of Charles II, who had at last come into his own, meditated wiping the Dutch off the Atlantic seaboard. It availed not to plead rights; Lord Baltimore snapped his fingers. Lieutenant-Governor Beekman, indeed, delayed the appropriation of Delaware; but Long Island was being swallowed up, and nobody except the Government cared. The people may be incompetent to frame laws; but what if they decline to fight for you when called upon? If they cannot make taxes to please themselves, at all events they will not make war to please anybody else. If they are poor and ignorant, that is not their fault. The English fleet was impending; what was to be done? Could Stuyvesant but have multiplied himself into a thousand Stuyvesants he knew what he would do; but he was impotent. In August, 1664, here was the fleet actually anchored in Gravesend Bay, with Nicolls in command. "What do they want?" the Governor asked. "Immediate recognition of English sovereignty," replied Nicolls, curtly; and the gentler voice of Winthrop, of Boston, was heard advising surrender. "Surrender would be reprov'd at home," said poor Stuyvesant, refusing to know when he was beaten. He was doing his best to defeat the army and navy of England single-handed. But the burgo-masters went behind him and capitulated, and—Peter to the contrary for four days more notwithstanding.—New Amsterdam became New York.—Hawthorne's "History of the United States," Vol. I, pp. 114-115.

ever, that the settlers fared much better under English governance for a while. Taxation without representation was again to be the cause of town resolutions. These were characterized as seditious by the English governor, Colonel Lovelace, but they had bearing on the loyalty of the colonists when the enemy again appeared. However, this is material for review in a subsequent chapter.

The delegates to the memorable conventions of 1653, out of which so much eventually came, were as follows:

Convention of November 26, 1653: Martin Cregier and Paulus Leendertsen van der Grist, of New Amsterdam; George Baxter and James Hubbard of Gravesend; John Hicks and Tobias Feaks, of Flushing; and Robert Coe and Thomas Hazard, of Newtown. Johannes la Montagne and Cornelis van Werckhoven, members of the Governor's Council, also attended.

Convention of December 10, 1653: Arent van Hattem, Martin Cregier, Paul L. van der Grist, William Beeckman, Peter Wolphertsen van Couwenhoven, of New Amsterdam; George Baxter and James Hubbard, of Gravesend; John Hicks and Tobias Feaks, of Flushing; Robert Coe and Thomas Hazard, of Newtown; William Wasborn and John Seaman, of Hempstead; Thomas Spycer and Elbert Elbertsen (Stooth'f), of Flatlands; Frederick Lubbertsen and Paulus van der Beecq, of Brooklyn; Thomas Swartwout and Jan Strycker, of Flatbush.

The next convention was that of 1663, the delegates being from the loyal Dutch towns, the purpose of the convention being the consideration of means of maintaining an armed force for the defence of the province. The delegates were:

Paul L. van der Grist and Jacob Strycker, of New Amsterdam; Simon Jansen and Roelof Martensen, of Flatlands; William Wilkins and Charles Morgan, of Gravesend; Frederick Lubbertsen and Peter Pietersen van Nes, of Brooklyn;



John Strycker and Hendrick Jorissen; of Flatbush; Rutger Joosten and Jacob Pietersen, of New Utrecht.

The meeting was at New Amsterdam on July 6. Another convention was held on November 1 of that year, 1663, at New Amsterdam, and at it a remonstrance addressed to the Amsterdam directors of the West India Company was approved and signed; it protested against the lack of military support received from Holland, and emphasized the danger to the settlements and settlers by enemy attack, Indian as well as English. The names of the delegates to this November convention have, however, not been found.

Delegates of the five Dutch towns of Long Island met again on February 27, 1664, at Flatbush, to protest against the outrages of Scott, and to decide upon the sending of delegates to Holland to represent to the States General and the West India Company the distressed state of the country. The assembled delegates were:

Adriaen Hegeman, Elbert Elbertsen (Stooth'f), Pieter Claessen and Roelof Martensen Schenck, of Flatlands; William Bredenbent and Albert Cornelissen Wantenaar, Teunis Gysbertsen Bogaert, and Thomas Ver Donck, of Brooklyn; Hendrick Jorissen, William Jacobsen van Boerum and Jan Snedicker, of Flatbush; Jacob Pietersen, Balthazar Vosch and Francis de Bruyn, of New Utrecht; Peter Jansen de Witt and Barent Joosten, of Bushwick.

On April 10, 1664, a general assembly of delegates of all the Dutch towns and colonies was convened, to consider the grave predicament of New Netherland, and to ascertain the will of the people of all parts of the province. It resulted in the convention refusing to vote supplies for the general defence. After an adjournment of a week, the delegates resolved that it would be unwise to oppose the will of the English towns to finally pass out of the jurisdiction of New Netherland. This decision was reached despite the arrival of a military force from Holland, "with instructions to check

the English, reduce the revolted villages, and replace the removed magistrates."

This was the last convention held during the governorship of Stuyvesant. It was, indeed, the first General Assembly called regularly under the plan of the Provisional Order of 1650, too late to be of any value. The delegates were:

Jeremias van Rensselaer, president, and Dirck van Schelluyne, of Rensselaerwyck; Cornelis Steenwyck and Jacob Backer, of New Amsterdam; Jan Verbeeck and Gerrit Slechtenhorst, of Fort Orange; Thomas Chambers and Gysbert van Imbroch, of Wiltwyck; Daniel Terneur and Johannis Verveelen, of Haarlem; David de Marest and Pierre Billou, of Staten Island; William Bredenbent and Albert Cornelisson Wantenaar, of Brooklyn; Jan Strycker and William Guilliamsen, of Flatbush; Elbert Elbertsen Stoothof, Coert Stevensen van Voorhees, of Flatlands; David Jochemsen and Cornelis Beeckman, of New Utrecht; Jan van Clef and Gysbert Teunissen Bogaert, of Bushwick; Engelbert Steenhuysen and Herman Smeeman, of Bergen.

In the brief period (1673-74) of the return of the Dutch government to the former New Netherland two conventions were held. The first was held at Jamaica on September 4, 1673, the delegates being from the eastern towns, Englishmen who gathered to confer with the Dutch commanders. The representatives were Thomas James, of Easthampton; John Jessup and Joseph Reyner, of Southampton; Thomas Hutchinson and Isaac Arnold, of Southold; Richard Woodhull and Andrew Miller, of Brookhaven; Isaac Platt and Thomas Skidmore, of Huntington.

In March, 1674, the last convention under Dutch government was held, the matter of more urgent concern being plans of defence against a combined New England attack. At the convention were:

The burgomasters of New Orange; Jacob Strycker and Francis Bloodgood, representing the Dutch inhabitants of



Flushing, Jamaica, Newtown and Hempstead; Tennis Gysbertsen Bogaert and Jeronimus Rapalie, of Brooklyn; Roelof Martensen Schenck and Coert Stevensen van Voorhees, of Flatlands; Jan Strycker and Anke Jansen, of Flatbush; Joost Kockuyt and Hendrick Barentsen Smit, of Bushwick; Hendrick Mattysen Smack and Cryn Jansen, of New Utrecht; Claes Barentse and Caspar Steynmits, of Bergen.

In that month, by the Treaty of Westminster, the cession of New Netherland to the English was finally made, though New Amsterdam did not hear officially of it until July of that year, 1674. Then the Dutch colonists had to bow to the inevitable, though when the first rumor reached them in May, the New Netherlanders had vowed, in their wrath, that no demand or authority "of the States or Prince" should make them surrender again. In their brief experience under English rule they had found that English governors could be just as arbitrary and despotic as Dutch<sup>12</sup>; and they vowed that they would keep their territory "by fighting, so long as they could stand with one leg and fight with one hand." How-

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12. The English courted favor by liberal treatment of their new dependants on the western shore of the Hudson; whatever the Dutch had refused to do, they did. The Governor and Council were to be balanced by the people's representatives; no more arbitrary taxation. . . . By such inducements the wilderness of New Jersey, assigned to Berkeley and Carteret, was peopled by Scots, Englishmen, New Englanders and Quakers. . . .

Manhattan did not get treated quite so well. The Governor had everything his own way, the Council being his creatures, and the justices his appointees. The people were permitted no voice in affairs, and might as well have had Stuyvesant back again. After Nicolls had strutted his term, Lord Lovelace came, and outdid him. His idea of how to govern was formulated in his instructions to an agent: "Lay such taxes," said he, "as may give them liberty for no thought but how to discharge them." . . . He attempted to levy a tax for defence, and was met with refusal; the towns of Long Island had not one cent either for tribute or defence. His lordship swore at them heartily, but they heeded him not; and he found himself in the shoes of the ousted Dutch Governor, in another sense than he desired. And then was poetic justice made complete; for who should appear before the helpless forts but Evertsen with a Dutch fleet! New York, New Jersey and Delaware surrendered to him almost with enthusiasm, and the work of England seemed to be all undone.—*Ibid.*, pp. 115-116.

ever, this suicidal determination fortunately passed before July, when the Governor gave official notice at the Stadt Huys that the province could no longer be ruled by him, or any other Dutch governor.







## CHAPTER XIII. DUTCH MAGISTRATES.

### The Governors and the Patroons.\*

When one remembers that Dutch sovereignty in the New World covered a period of only about fifty years, and that the rule extended over only a small part of the North American continent, one is prompted to look for other reasons why Dutch institutions made such a lasting impression upon American life of succeeding centuries. There are many reasons. Some are obscure, some clear. Some are especially interesting. Romancers find picturesque reasons in the colorful characteristics of the Dutch, in their domestic life and hospitable dispositions. Commercial men of New York might think of the traders of New Amsterdam as the founders of the great commercial mart of to-day. But students of political economy and government will be more attracted by the distinct political phenomenon shown in Dutch history illustrating the profound problem of self-government in mankind. The Netherlanders who came to America had in childhood been nursed in the spirit of freedom; the theories of independence had been inoculated in them as they grew to manhood;

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\*AUTHORITIES—"State of Jurisprudence During the Dutch Period"; "History of Bench and Bar of New York," by Daly; "The Rise of the American People," by Usher; "History of the City of New York in the Seventeenth Century," by Mrs. Schuyler van Rensselaer; "Legal and Judicial History of New York," by Chester; "Voyages of De Vries," New York Historical Soc. Coll., Vol. I; "National Cyclopaedia of American Biography," White; "Civil List and Constitutional History of New York," by Werner; "History of United States," by Bryant; "History of United States," by Hawthorne; "Beacon Lights of History," by Lord; "History of United States," by Lossing; "Courts and Lawyers of Pennsylvania," by Eastman; "Rise of the Dutch Republic," by Motley; "Minutes of the Court of Rensselaerswyck," translated by Archivist Van Laer (Univ. State of New York, 1922); "History of Troy and Rensselaer County, New York" (1925); "Anti-Rent Agitation," by E. P. Cheyney (1887); "New York Colonial Manuscripts."



and the struggle to attain it had been part of their life from earliest manhood. Their fathers had served under William the Silent, perhaps; and the most absorbing question ever before them, and their forebears, throughout the eighty years of grim struggle against the mightiest European power, Spain, had been the inalienable right of the commonalty to rule their affairs through their own representatives. The principle of self-government had been close to them in their own municipalities of the United Provinces. Their bosoms had expanded in a national consciousness as they rose gradually out of the serfdom of feudalism; and they were satisfied that their government by States General, Burgomasters and Schepens—a sham democracy though it actually was—was Independence. But, when transplanted in a new world, they gradually became aware that the freedom with which they had been contented in the old world, that was hoary with the decrepitude of feudalism, was not the liberty they might expect to enjoy in the wide spaces of a new world. Notwithstanding that they sought only the establishment of burgher government like that of the Fatherland, the consciousness that in America the commonalty had broader rights could hardly fail to come to them. Conditions were so different. Freedom in the Old World was modified by the grades of society, and conservatism was so imbedded in the thoughts of all classes that the levelling of these social grades was hardly expected by even the most radical reformer. But in the primal splendor of the American wilderness, the pioneers were nearer to fundamentals, in both thought and action. Still, it must be admitted that the Dutch of New Netherland never saw clearly, as Jefferson did, “that all men are created equal.” They were rather examples of Hawthorne’s theory that “the conception of human equality before the law is not a congenital endowment, but an accomplishment, arduously acquired and easily forfeited.”

The New Netherlanders were not radical theorists or dreamers. They lived a practical life, and were amenable to constituted authority. It is, possibly, this latter trait in them that carried the Dutch impress most indelibly into American institutions of long after their own day of sovereignty. Their struggle for self-government was not a rebellion against regularly constituted government, as ordered by the States General; it was against the usurpation of such constitutional rights by the agents of commercial adventurers—by the Directors-General of the West India Company. Throughout the administration of New Netherland by the latter, constitutional government was subordinated to commercial expediency; only those privileges that did not jeopardize or deplete the coffers of the West India Company were recognized by the governors; others were evaded until popular agitation made evasion no longer possible.

However, the Dutch colonist was ever logical and reasonable. In general, he did not see that the plebeian should not bow to the patrician; the poor immigrant who came across the sea at the expense of the patroon did not see that service to the latter was slavery; and the illiterate citizen was ever ready to acknowledge the mental superiority of the man of letters who was helping his cause. He knew that some must serve and some direct; but, in the New World, where dangers were common to all, where labor was almost the common lot, where muscle was more the need of the moment than culture, men got to feel that the hide-bound habits, customs and precedents of the Old World should not wholly govern the New. In the majesty of the great works of nature that surrounded him in all their primal grandeur the average colonist could not fail to be strengthened in independence; he could not fail to see that God's bounteous providence was meant as much for himself as for the patroon and governor; for the commonalty as well as the nobility; he could not fail to realize that God's plan made man supreme over all other



living things, but that "no man or body of men, no matter how richly endowed by nature or circumstance with intellect or riches," should be accorded the right to dispose arbitrarily of the lives and welfare of a less fortunate class. He saw it as God's will that "not elsewhere than in the hands of the entire community shall be lodged the reins of government; that although the administration shall be with the chosen ones whose training and qualifications fit them for that function, the principles on which their administration is conducted shall be determined by the will and vote of all."

The New Netherlanders came to this way of thinking more by the "slow irresistible energy of natural law" (which tells a man that the profit he wins by his labor must first yield himself sustenance before others may share), than by the ponderous search in political codes. The same freedom was sought along other roads in other colonies; but all found "in the virgin solitudes of an untrodden continent" that man's destiny in America could not long remain crimped and hedged by the class barriers that hampered the exercise of man's natural rights in Europe. "American democracy originated in necessity."<sup>1</sup> The Dutch of New Netherland did not travel to the end of the road, and the footprints indelibly marked by the Dutch in American institutions are those of the more cultured section of the commonalty—the magistrates, lawyers

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1. American democracy originated in necessity; the settlers did their own work because there was no one else who could by any possibility do it. . . . The circumstances of settlement, permitting no great extremes of wealth or poverty, of education or ignorance, naturally provided the very conditions best adapted for democracy. Indeed, any other form of government would have been an anomaly, and the various schemes, worthy and unworthy, concocted by capitalists and theorists, from the complicated system of councils proposed by Sir Thomas Smith to the elaborate dreams of John Locke and the constitutional experiments of William Penn, one and all promptly and ingloriously failed. The conditions were right for democracy and were therefore wrong for feudal palatinates and aristocratic lordships. No one tried to plant democratic governments; nothing else could be made to grow.—Roland Greene Usher, in "The Rise of the American People," pp. 44, 45.

and leaders of the people generally. But, as a whole, the strong characteristics of the New Netherlanders have been discernible through all of the generations to the present, contributing to America, in each generation, valuable elements of citizenship.

That some of the solid bases of character necessary to mould a worthwhile American would be found in the Dutch was to be expected. Great achievements are not won by the weak; and some of the achievements recorded of the Dutch in their history were such as would test or build the strongest manhood. The Dutch, the "first nation to put a girdle of empire around the world," the little nation, living on the fringes of the sea, that made itself the greatest maritime power in the world, while fighting incessantly on land for possession of their little low-lying home tract, which they had literally won from the sea, and which the sea, as well as the mightiest nation of Europe, was trying to rob them of, must have contained the elements of moral strength needed to build a people capable of asserting the principles of self-government, of democracy, in a new land as vast as the whole of Europe. It was America's destiny to draw strength from the Dutch as well as from the English. The obstinacy of men like Petrus Stuyvesant contributed self-confidence and perseverance; the manorial dignity and lordly manners of the patroons have been seen in their descendants in New York, in innate gentlemanliness and in the ability of some to handle large affairs in a large spirit. The stolidity of the Dutch burgher has been shown in amusing anecdote by some chroniclers, but this stolidity may be relied upon for steadiness and mature sound judgment in the more serious happenings of life. The commercial instinct of the traders of New Amsterdam is the heritage of the great merchants of the great city of to-day. The high professional qualifications, purposes and dignity of Adriaen van der Donck and Lubbertus van Dincklagen, both Doctors of Law, are good pat-



terns for New York lawyers of to-day. In so many ways, all, of course, predestined, the Dutch of New Netherland helped to lay the firm foundation of the great nation that was to be and now is. Had they, for instance, not lived amicably with the powerful Mohawks and the Iroquois Confederacy in general, thus creating hostile territory which the French of Canada must penetrate and pass through to reach the Atlantic coast and isolate New England, the history of colonial America might have been very different, and the dominant language of North America might now be French instead of English.

It is not generally recognized, or realized, that the Dutch of New Netherland were cultured. They are looked upon primarily as traders, just as the Virginian pioneers are deemed to have been scions of noble English families, fond of ease and adventure, and the Massachusetts Bay colonists are generally thought to have been learned unbending Puritans, who worked hard and prayed harder. But New Netherlanders were interested not only in trade; there was a school for the sons of the burghers in New Amsterdam as early as 1629, it seems. Moreover, in that year the patroon system was introduced, one of the conditions of grant being the institution of schools by the patroons. Massachusetts, on the other hand, did not institute a free school until 1642.

There are other indications that the thoughts of the people of New Netherland were not only mercenary. One cannot read far in the court records translated by Van Laer and others without realizing that men of learning and high moral purpose were connected with the administration of justice in the Dutch colony. Former Chief Justice Daly wrote: "Upon perusing them it is impossible not to be struck with the comprehensive knowledge they display of the principles of jurisprudence." He was the more surprised when he realized how complicated was the Dutch legal code of that period, and how difficult it was to acquire a knowledge of jurisprudence. "That these magistrates should have had any

general or practical acquaintance of such a system at all was scarcely to be expected," he writes, "but that they had is apparent, not only from the manner in which they disposed of the ordinary controversies that came before them, but in their treatment of difficult problems." Mrs. Schuyler van Rensselaer came to like conclusions. She writes: "The mental caliber of the New Netherlanders may be tested by reading the bulky volumes which contain translations of their public papers—popular petitions, complaints and expositions, official journals, reports, manifestos and letters. Many of them, besides the Remonstrance of 1649, have the high merit of logical arrangement, lucidity and dignity. . . . Some have a flavor of scholarship, literary skill and individuality which persists even in an alien language." "In short," she writes, "it is not more justifiable to think of New Amsterdam as a slow-witted, illiterate place than as a drowsy uneventful place. The more closely we read its chronicles in the words of its own founders and fosterers, the more clearly we perceive how civilized, how modern it was in its essential habits of mind."<sup>2</sup>

But it may be well here to point out that most of the records, other than ecclesiastical, which stamp New Amsterdam as a place of many cultured men, were the work of government officials, magistrates, lawyers, legislators. In other words, the cultured men of the Dutch period were, in the

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2. In short, it is not more justifiable to think of New Amsterdam as a slow-witted, illiterate place than as a drowsy, uneventful place. The more closely we read its chronicles in the words of its founders and fosterers, the more clearly we perceive how civilized, how modern, it was in its essential habits of mind. If an American of to-day could be transplanted back two hundred and fifty years, he would find himself more comfortably at home on Manhattan than anywhere else. In some of the English settlements he would have the chance to exercise more direct political power, but in none excepting Rhode Island would he find as much personal freedom, and in none at all a general mental attitude, a prevailing temper, as similar to the temper of America of to-day.—Mrs. Schuyler van Rensselaer, in her "History of the City of New York in the Seventeenth Century," Vol. I, 483.



main, those who were identified with governmental processes, and with the administration of justice.”<sup>3</sup>

#### THE GOVERNORS.

A review of those who had part in governmental affairs must, of course, begin with the governors, or Directors-General, who were the chief magistrates. In the main, they were capable men of affairs, but suffered a blackening of their records—as viewed by the commonalty—by adhering to the fundamental requirement of their office, viz.: that government should conform to, and in no wise jeopardize, the commercial interests of the proprietors, the West India Company. The Directors-General were: Cornelis Jacobsen May, in office in 1623-24; Willem Verhulst, in office in 1625; Pieter Minuit, in office in 1626-1632; Bastiaen Jansz Krol, in office in 1632-1633; Wouter van Twiller, in office in 1633-1638; William Kieft, in office in 1638-1647; Petrus Stuyvesant, in office in

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3. The struggle of the commonalty and its able representatives against the exactions of the governors and the determination of the West India Company to control, was always active, never ceasing, and often virulent. It was the work of men who were of sturdy, resolute character, firmly grounded in the democratic principles of the Fatherland, and determined to brook no opposition that stood in the way of their attaining their ends. In New Amsterdam and in the other villages there was continuous agitation in public and in private. Affairs of state—and they were certainly important affairs, fraught with great things for the future—were discussed on the street corners, at the tapsters, and in the privacy of homes. The meetings of the governor and council were often stormy, and in the representatives of the commonalty, who from time to time appeared before them in defence or demand of the rights of the people, the officials met their peers in argument, patriotic determination and energy. Some of the documents which that struggle for political control brought out have become historic. They were the production of men of natural activity of mind and of earnest convictions, who were masters of clear methods of expression. In the literary sense they may not have been equal to the didactic and religious tracts which the leaders of New England put out at that time, but as the full expression of manhood, and of wholesome devotion to the democratic principles, they will stand comparison with the ablest productions of the kind that the world has ever known. No one can read the famous Remonstrance of the Board of Nine Men against Governor Kieft; the various petitions of the different Boards of Men to the governors, to the West India Company, or the States General; the petition of Kuyter and Melyn to Stuyvesant, in 1647, and the answer of the same leaders to Governor Kieft, making allegations respecting



1647-1664; Anthony Colve, in office in 1673-1674. (Werner, in the "New York Civil List," shows Adriaen Joris as in office in 1623, though he came with May).

So much has already been written of the Directors-General, in reviewing their administrations, that little more is here called for. Those who held office, as the chief representatives of the West India Company in New Netherland, for periods prior to the coming of Peter Minuit in 1626, hardly exercised magisterial control other than that of a sea captain over his crew. Prior to 1623, when the Walloons came, the Dutch of New Netherland were almost all servants of the Company—their traders and seamen; therefore, those who were in authority prior to 1623 are not classed as directors, but as superintendents, navigators, and the like. Adriaen Block, Hendrick Christaensen and Cornelis Jacobson May (Mey) were trading in New York waters in 1611-12. There were some others, but Christaensen seems to have been superintendent of the principal trading posts—on Manhattan Island and at what became Albany. At the latter place he was murdered by Indians in 1616 or 1617. Jacob Eelkens, a clerk in the Amsterdam office of the Company, succeeded him as superintendent. He negotiated and concluded the treaty of Tawasentha, with the Iroquois, Mohican, Delaware and North River Indian nations, which treaty has most important effect upon the destiny of New Netherland. Without such friendly understanding with the dominant Indian nations, the experiment in colonization by the West India Company might not have lasted many years. So that Jacob Eelkens did well,

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the war against the Indians; without instinctively recognizing the statesman-like quality of the productions, and the masterly minds of these men in the handling of the subject which was nearest their hearts. Certainly, New Amsterdam was a serious-minded place at that time; and it cannot be doubted that the views thus strongly expressed by the leaders and preserved in the old records sufficiently voiced the spirit and the temper of the whole people, and stamped them as men of intelligence, enterprise, sobriety and democratic spirit.—Chester's "Legal and Judicial History of New York," Vol. I, pp. 101-102.



while in charge in New Netherland, much better probably than several of the later Directors-General. He, however, blackened his record by endeavoring later—during the administration of Van Twiller—to transfer the prosperous Upper Hudson region to the English.<sup>4</sup>

The first of the regularly appointed directors was Captain Cornelis Jacobsen May, who was placed in command of the "New Netherland," in which the Walloons made the voyage in 1623. May's name is perpetuated in the Cape May of Southern New Jersey. It might have been perpetuated in New York Bay also, for that was for some years called *Port May* in his honor. May was in New York waters with Block and Christiaensen in 1612-1613. May cruised along the American coast during subsequent years, going as far south as Chesapeake Bay. He explored Delaware Bay in the ship "Fortune," and gave his name to the northern cape. In 1623 he established some of the Walloons on the South (Delaware)

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4. In April, 1633, shortly after the arrival of Governor Van Twiller, an English vessel, the "William," entered New York Harbor. Upon it was Jacob Eelkens, as supercargo. Van Twiller and De Vries dined with the English captain, and after the customary courtesies had been exchanged, matters of business were discussed. Eelkens then boldly declared his intention to go up the Hudson River with the vessel, so that the English captain might trade with the Indians on his own account and see for himself the land "that belonged to the English," the land that was discovered by "Hudson, who was an Englishman."

Upon returning to the fort, Van Twiller ran up the flag of Orange, and saluted with three guns, to indicate that the Dutch were in possession. The English captain hoisted the English flag, and also saluted with gunfire, signifying that he defied the Dutch. And while Van Twiller paced angrily up and down the ramparts, the English captain weighed anchor and sailed away—not out to sea, but up the Hudson River. Van Twiller was aghast at this audacity. He "collected all his people in the fort before his door" ordered a barrel of wine to be brought, and after "stoutly drinking bumper after bumper" himself, and presumably permitting his collected people to imbibe freely, he cried: "Those who love the Prince of Orange and me, emulate me in this, and assist me in repelling the violence committed by that Englishman." Then he retired to his quarters, and meanwhile, the English ship passed out of sight. De Vries, commenting disgustedly on the incident, exclaimed: "This commander, Van Twiller, who came to his office from a clerkship—an amusing case!" Van Twiller allowed the day to pass without action. De Vries dined with him, and expressed himself quite



River, building a fort near the present town of Gloucester. His "lieutenant" was Adriaen Joris, to whom he may for a time have deputed authority, though Joris does not seem to have been more than acting governor. Joris returned to Amsterdam in December, 1624. Regarding Verhulst, who succeeded May as Director in 1625, there is very little on record. He was a captain in the West India Company's service, and, possibly, took the reins of office as acting governor when Captain May decided to return home at the end of 1624. In fact, both May and Verhulst, it would seem, may be classed as only temporary governors.

Regarding Peter Minuit (who, by one account, was appointed Director-General in 1624, but who did not reach New York waters until May of 1626) much more is known. He was the first to be given broad authority, and indeed the first to be accorded the title of Director-General. Born in Wesel, Rhenish Prussia, of, it is believed, Dutch parents, in 1580, he grew to manhood in that place. He was a deacon in the Protestant or Walloon church in Wesel; but "early in the seventeenth century" removed to Holland. He arrived off Manhattan Island on May 4, 1626. Soon he purchased the

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freely. He writes: "I spoke then as if it had been my own case, and told him that I would have made him go from the fort by the persuasion of some *iron beans* sent him by our guns, and would not have allowed him to go up the river. I told him that we did not put up with things in the East Indies; there we taught them how to behave."

After several days of hesitation, Van Twiller despatched some small craft, with a force of soldiers to Fort Orange, to compel Eelkens to desist from trading. The "William" was brought down the river, and was then ordered out of the harbor by Van Twiller.

The upshot was that Eelkens made complaint to the English Government, and demanded damages. The West India Company countered by claiming that damages should be paid to them for Eelkens' interference with Dutch trade. This brought to the front the question of the Dutch title to New Netherland. It was suggested that the English ambassador at the Hague and the Dutch ambassador at London should consider the matter and delineate a boundary line between Dutch and English possessions in America. However, in a few months other and weightier matters caused both governments to lose sight of the New Netherland difference of opinion. —See "Voyages of De Vries," N. Y. Hist. Soc. Collections, Vol I.



island from the Indians, paying therefor baubels, pots and pans and other goods to the total value of sixty guilders (\$24). His administration came to an end in February, 1632, he having been recalled to explain other transactions in land—transactions in behalf of patroons and at the expense of the West India Company. Misfortune that came to him on his homeward voyage perhaps prejudiced the Amsterdam directors of the West India Company, who decided not to reappoint him, after hearing his defence. Stormy weather had driven his ship into Plymouth Harbor, in the English Channel; and the British authorities had been disposed to hold both Minit or the West India Company's vessel, the New England Council having complained that he had "prosecuted illegal trading within English dominions." After some diplomatic exchanges both were released, but Minit never regained favor with the West India Company. Wherefore, he did not scruple to foster a colonization scheme of another nation, Sweden, in part of the land over which he, as Dutch governor, had claimed jurisdiction. He sailed from Gothenburg, Sweden, in 1637, at the head of a party of Swedes and Finns, and founded New Sweden, building Fort Christina near where Wilmington, Delaware, now stands. In that fort he died in 1641, "regretted by the Swedes whom he had served most faithfully, and whose enterprise he had made successful, where one of less experience would probably have failed."

Bastiaen Jansz Krol, we are told, was the next governor of New Netherland. It is certain that he took charge when Minit was suddenly recalled; but it seems to have been another temporary incumbency. All that is known of Krol has been stated in an earlier chapter.

Wouter Van Twiller, the next governor, was twice in New Netherland before he came in April, 1633, as governor. He was born at Nieukirk, Holland, and became a clerk in an Amsterdam warehouse of the West India Company. He married a niece of Kiliaen van Rensselaer, who was a Burgo-

master of Amsterdam and an Amsterdam director of the West India Company; and Van Twiller had made two voyages to Van Rensselaer's Hudson River estate, superintending the shipment of cattle, before being thought of as governor. In the summer of 1632 Van Twiller was chosen by the Amsterdam directors, without solicitation by Van Rensselaer, to succeed Minuit as Director-General. He and his Council reached New Netherland on the "Zout Berg." The principal events of his administration have been reviewed in earlier chapters. He was not an aggressive governor, but during his four years as Director-General he accumulated considerable wealth, purchasing for himself Nooten (Governor's) Island, and other land. He had planned to establish himself in manorial state on Nooten Island. His sudden recall in 1638 was therefore a bitter disappointment to him. He remained in the colony for some time after the arrival of his successor, William Kieft; but eventually he returned to Holland. Kiliaen van Rensselaer having died in 1643 or 1644, Van Twiller became guardian to Johannes van Rensselaer, eldest son of the patroon. Van Twiller died in Amsterdam, Holland, in 1646, states one record. But the "Court Records of Rensselaerswyck" show that Wouter Van Twiller was in correspondence with a colonist, Gerrit Vasterick in 1650. And there are many references to Van Twiller between 1648 and 1650.<sup>4a</sup> His last years were marked by many controversies between the West India Company and himself; the West India Company accusing Van Twiller of being "an ungrateful man, who had sucked his wealth from the breasts of the company which he now abuses."

William Kieft, who was governor from 1638 to 1647, a stormy period, during which the province suffered severe losses of life and property, did more to jeopardize the existence of the colony, by his vindictiveness toward the Indians,

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4a. See the translation of "Minutes of Court of Colony Rensselaerswyck, 1648-52," by Archivist Van Laer (Univ. State of N. Y., 1922).



than any other Director-General of New Netherland. He was born about 1600, in Holland, and was of somewhat disreputable report at the time of his appointment to the governorship.<sup>5</sup> His was, at the outset, a somewhat difficult task in New Netherland, as may be judged from his first report to the Company, which paints a somewhat discouraging picture of the state of the province. He wrote: "The fort is open at every side except the stone point; the guns are dismounted; the houses and public buildings are all out of repair; the magazine for merchandise has disappeared; every vessel in the harbor is falling to pieces; only one windmill is in operation; the farms of the Company are without tenants and thrown into commons; the cattle are all sold or on the plantation of Van Twiller." The latter had an extensive cattle ranch; also a tobacco plantation on Manhattan Island. So, perhaps, there was some excuse for the strong despotic action Kieft took. Unfortunately, he was not broad-minded as well as strong. His administration was disastrous, in consequence; and in 1647 he was recalled. He was drowned while returning to Holland in that year.

The main points of Kieft's administration have been considered in other chapters. Some of the minor ones were: The establishment of a passport system; the institution of bell ringing at "Curfew" (nine o'clock) each night, to announce the hour for retiring; the distilling by the governor, on a Staten Island farm in 1640 "of the first liquor ever made in this country"; the building by the West India Company of the first tavern opened in New Amsterdam, that which became

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5. He landed on Manhattan Island March 28, 1638 . . . to find that rumors to his disadvantage had preceded him. It was said that he had failed in mercantile business in Holland, and that, according to Dutch custom, his portrait had been affixed to the gallows in consequence. That, in Dutch estimation, was a lasting disgrace. After that, it was alleged, he had been sent by his government, as Minister to Turkey, and entrusted with money to free some Christian captives, but the captives were not liberated, nor the money returned.—"Nat. Encyc. American Biog.," Vol. VI, 91.

the Stadt Huys in 1653; the building of a new church of stone, in 1642.

Petrus Stuyvesant, the next governor, was probably the most picturesque personality of the Dutch period in New York. He was born in the province of Friesland, in the Netherlands, in 1602,<sup>5a</sup> the son of Balthazar Stuyvesant, a clergyman of the Reformed Church. The son received a classical education, his father probably hoping that he would enter the ministry; but this headstrong turbulent boy was better fitted for a military career. He became a soldier, and in time reached responsible office in the colonial forces. He was governor at Curacao, in the West Indies, in the 'forties, and in an attack upon the Portuguese island of St. Martin, in 1644, lost a leg. In August of that year, after having sent one hundred and thirty of his soldiers from Curacao to New Netherland, to help Kieft, then beset by Indians, Stuyvesant returned to Holland for surgical treatment. In 1645 it was decided to recall Kieft, and Lubbertus van Dincklagen was chosen to succeed him as Director-General of New Netherland. However, he was a man of peace and future possibilities in New Netherland seemed to call for direction by a military man. So, Stuyvesant having made good recovery after his operation, the appointment of van Dincklagen was cancelled, and the soldier from Curacao given the commission. In 1647 he reached New Netherland, with the effect stated in earlier chapters. After the English took possession of New Amsterdam Stuyvesant returned to Holland to explain the surrender. While it was probably recognized that Stuyvesant had done all that was personally possible, and that the passing of New Netherland to the English was inevitable and could not have been stayed by him or any other governor, the old soldier seems to have been uncomfortable in Holland. Moreover, his wealth—not inconsiderable—was in New Amsterdam. So,

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5a. Compare with footnote No. 6.



despite the presence of the dominant English, he returned to New Amsterdam in August, 1672, and lived the remainder of his life upon his Bowerie estate. According to the inscription on his tombstone, which is in the outer wall of St. Mark's Protestant Episcopal Church, New York City, Petrus Stuyvesant died in 1672.<sup>6</sup>

The brief administration of Anthony Colve, who was governor for less than a year (1673-74), will be considered in the proper place in the review of the sequence of events of English rule in New York. Colve gave indications of good executive ability, but, of course, he could hardly have been expected to more than temporarily hold the province, if the strong New England colonies united to attack it. Indeed, it is doubtful whether he could have held it against even the English within the province.

Undoubtedly, the acts of most of the Directors-General of New Netherland were arbitrary; and not one seemed to welcome popular government. Yet, when all points are considered, the inclination towards the feudal shown by the governors was not without reason, nor indefensible. The task of each governor was difficult, rendered more so by the mercenary purpose they had ever to keep in mind. Hampered as they were by divided authority within the province, and by little prestige outside, they were not enviably situated. The authority of the patroons complicated executive matters, ren-

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6. He was buried at his chapel in the Bowerie, the site of which is now occupied by St. Mark's Protestant Episcopal Church. In the outer wall of that edifice his tombstone may be seen, inscribed:

"In this vault lies buried Petrus Stuyvesant, late Captain General and Governor in Chief of Amsterdam in New Netherland, now called New York, and the Dutch West India islands. Died A. D. 167½, aged 80 years."

His widow, Judith Bayard Stuyvesant, lived upon the Bowerie until her death, in 1687. Of her two sons, Balthazar was born in 1647, and settled in the West Indies, where he married and died; Nicholas William was born in 1648. He remained in New York City and married Maria Beekman, and after her death, Elizabeth van Schlectenhorst. By her will, Mrs. Judith Bayard Stuyvesant founded St. Mark's Church.—"Nat. Cyclopaedia of Am. Biog.," Vol. V, 140.

dering central control difficult; the non-assimilable English of Long Island were disaffecting influences within the province; and the weakness of New Netherland by comparison with the New England colonies constituted a chronic state of apprehension in governmental circles, a state rendered more ominous by the certainty that the New England colonies looked upon the Dutch as interlopers, occupying land which rightly was English territory. Therefore, some of the faults of the governors of New Netherland may be condoned; some of their failures to please all classes may, perhaps, be attributable to weaknesses of the Dutch system of government, to their faulty land titles, and to government by a chartered commercial company, rather than to weaknesses of their own persons. It would be well to bear these circumstances in mind when judging the governors of New Netherland by their official acts.

#### THE PATROONS.

The manorial system, in the granting of patroonships in 1629 was generally a failure. It was conceived in an effort by the West India Company to colonize their province at the expense of others. The patroon had feudal powers, and, in practice undermined both the finances and the political strength of the West India Company. The patroons had judicial powers over those who settled within their manor, though it seems that "the Patroon of Rensselaerswyck was the only one who established a manorial court."<sup>7</sup>

The patroons were:

Michael Paauw, granted the patroonship of Pavonia, reaching into what became New Jersey, from what is Jersey City; this patroonship was surrendered in 1636-37; it was granted in 1630.

Samuel Godyn and Samuel Blommaert, patroons of Swandael, a manor at the capes of the Delaware River. Granted in 1630; surrendered February 7, 1635.

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7. Werner's "Civil List of N. Y.," 1888 ed., p. 58.



Kiliaen van Rensselaer, patroon of Rensselaerswyck, granted in 1630-31; his son, Johan, succeeding and becoming a power in the province.

David Pietersen de Vries, partner in the Swanendael manor, and there as resident patroon in 1632, after an Indian massacre; later, the patroon of Vriesendael, by the Tappan Sea; and in 1640 patroon of Staten Island.

Meyndert Meyndertsen, patroon of Achter Col, the region in New Jersey from the Raritan River to the Highlands. Granted in 1641.

Cornelius Melyn, patroon of Staten Island. Granted in 1642; surrendered in 1659.

Adriaen van der Donck, patroon of Colendonck. Granted in 1646, the tract embracing what became Yonkers and extending into Westchester County.

Cornelius van Werkhoven, patroon of Neversinck and Tappan. Granted in 1651. He abandoned these and in 1652 established a colonie at Nyack, now New Utrecht, L. I.

Godyn and Blommaert were the first to act. They were Amsterdam directors of the West India Company, and, having advance knowledge of the intentions of the Company, they had prepared the way by acquiring the Indian title to "the Bay of the South River" before the first passage of the charter; but they, of course, decided to come within the provision of the charter, and had the distinction of receiving the first patroon's patent, it being issued to them on July 15, 1630. "It was the first European title, by purchase from the aborigines, within the limits of the present State of Delaware," writes Brodhead, "and it bears date two years before the charter of Maryland, granted to Lord Baltimore by Charles I." These patroons do not come prominently into New Netherland affairs, as they left the colonization to others; and after disastrous experience with the Indians and difficulties with the Company, the land was reconveyed to the latter. Captain Pieter Heyes took out thirty emigrants to Delaware Bay in 1631 and founded Swaanendael, near the present town of Lewiston, Delaware; but in the first year, all the settlers were

murdered by Indians, Captain de Vries finding, in 1632, only the ruins of the burned houses to mark the site of Heyes' colony.

David Pietersen de Vries was one of the strongest men connected with public affairs in the province during the administrations of Van Twiller and Kieft. He had long been in the service of the East India Company, and was experienced in colonial affairs. Probably because of this his attitude toward both Van Twiller and Kieft was that of a major officer advising a minor; and had they followed his advice some calamitous happenings would have been averted. De Vries was a partner of Godyn, Blommaert, Van Rensselaer and other directors of the West India Company in the Swaanendael enterprise, and was the active patroon. When this manor was given back to the Company in 1635, Van Rensselaer was compensated by a grant of an additional tract near, or contiguous to, his already extensive estates at Rensselaerswyck. De Vries later began a colony by the Tappan Sea; it was known as Vriesendael. In 1640 he bought land on Staten Island, and was one of the first to carry out colonists to the plantation, under the improved colonization plan of 1638 and 1640. In 1641 he is referred to as the Patroon of Staten Island; in that year he gave Cornelis Melyn permission to erect a small redoubt upon the eastern headland, where a flag could be raised whenever a vessel appeared in the bay, thus giving Manhattan its first system of marine telegraphy. In June, 1641, Staten Island was raided by Indians, and the plantations of De Vries suffered. De Vries was the president of the first popular body, representative of the commonalty, constituted in New Netherland; and he had lost materially by the Indian raids upon his settlements; yet he emphatically opposed Governor Kieft in his plans to bring the Indians under subjection. De Vries did not hesitate to tell the governor so in emphatic language, and in consequence he lost favor. He seems to have passed over the patroonship of



Staten Island to Melyn, as well as his leadership of the popular body, for he does not come into the New Netherland record after 1643. De Vries had part in the peace treaty negotiated early in 1643,\* but not in that of 1645. The Indians had confidence in him, and although when passions were aroused, and the savages had an advantage, the Redskins could not differentiate between his and other colonies of white men, his settlement at Vriesendael was at least once saved by the intercession of an Indian, who pointed out De Vries as "the good Swannekin chief."

Two other directors of the West India Company seized the patroonship opportunity that came to them in advance of the public, with the result that on the very day, in 1630, that the Charter of Privileges and Exemptions became known in New Amsterdam, Kiliaen van Rensselaer ratified the purchase of an immense estate, through his agent, Krol. Three months later Michael Paauw was confirmed by Governor Minuit in the patroonship of Pavonia. Michael Paauw's many estates were sold back to the West India Company five years or so later, but the Van Rensselaer estate was lost forever to the company. Van Rensselaer, in 1630, accumulated Indian titles to land in which the Company's trading post, Fort Orange, became in reality but an isolated station in the midst of a vast patroonship; and in the same eventful year Michael Paauw's agent secured a very long water frontage opposite Fort Manhattan, monopolizing what seemed to be the choicest terminal sites. Paauw's transactions were challenged by the Company, but Van Rensselaer for a while seemed to gain increasing favor in the Company.

Kiliaen van Rensselaer was a very rich merchant, "a dealer and worker in precious stones," and became Burgomaster of Amsterdam, as well as a director of the West India

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\*Not long after De Vries left the colony forever. He accepted a skipper's invitation to pilot his vessel to Virginia.—See "History of Long Island" (1925), p. 74.

Company. But Paauw was also wealthy, was a man of influence in Amsterdam; was also a Burgomaster of Amsterdam; and in addition was Lord of Achtenhoven. Therefore, the influential standing of Van Rensselaer in Holland can hardly explain why he was permitted to retain his vast estates and Paauw was forced to reconvey. Obvious facts are that Paauw's manor, Pavonia, was too near the head station of the Company, Fort Manhattan, and seemed to be sites of distinct potential value, whereas Van Rensselaer's tract was far away. This fact also probably guided the Indian policy of the agents of Van Rensselaer, as it had that of the traders who had been in that "up-river" region earlier. Fort Manhattan was so far away that they could not rush to it for protection in case of trouble with the Indians. So, a less arrogant bearing had to be observed in dealing with the Indians of the upper Hudson region. Eelken's cultivation of good relations with the Mohawk Indians in 1617-18 was repeated by Van Rensselaer's commissaries, the most successful in this being Commissary Arendt van Curler, who developed a strong, peaceful manor for Van Rensselaer while Pavonia was suffering from raid after raid by treacherous Indians.

The territory secured for Kiliaen Van Rensselaer in 1630 included:

1. An immense tract on the west side of the North River, extending from Barren Island, about twelve miles below Albany, to Samk's Island, and two days' journey inland.
2. Contiguous territory to the northward, carrying his boundaries nearly to the confluence of the Mohawk.
3. A tract on the east side of the river, with river frontage extending from Castle Island to Fort Orange, and from "Poetanock the Mill Creek, northward to Negagonce."

As time went on, and the upper Hudson region failed to bring much revenue, the Company realized that its trading post at Fort Orange did not get all the peltries that the Indians brought into the patroonship of Rensselaerswyck,



which embraced practically the whole of the present counties of Albany, Columbia, Delaware, Green and Rensselaer. They would have been glad to have ousted Van Rensselaer; in fact, they tried to but failed.

Kiliaen van Rensselaer was born in Amsterdam, Holland, in 1595. His death is believed to have occurred "at some time prior to August, 1644, and perhaps as early as the fall of 1643,"<sup>8</sup> "the patroon's estate and title passing to his eldest son, Johannes. As the latter was still in nonage, his uncle Johan van Wely, and his cousin, Wouter Van Twiller, were made guardians of the young patroon's estate. It is stated in one record that Arendt van Curler, another cousin, was also a guardian."<sup>9</sup> Adriaen van der Donck, who had held responsibility of officer of justice, or *schout*, at Rensselaerswyck for some time (probably since 1641, having been commissioned as such May 13, 1641) resigned at or about the time of the death of the first patroon. Nicolaes Coorn, "the commander at Rensselaers-Steyn, a small fort on Beeren Island,"<sup>10</sup> took Van der Donck's duties temporarily, but upon the arrival of Brant Aertsz van Slichtenhorst, in 1648, to succeed Van der Donck, Coorn became his assistant, with the title of *Officier Luytenant*, or deputy sheriff. After the arrest of Van Slichtenhorst, Gerrit Swardt succeeded him as *schout*. The other office of Van Slichtenhorst, that of director of the colony, was taken by Jan Baptist van Rensselaer, who had arrived in the colony in June, 1651.

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8. An entry in the minutes of the director-general and council of New Netherland, under date of August 8, 1644 (N. Y. Colonial Mss., 4: 99) in which reference is made to "the heirs of Mr. Rensselaer, deceased," shows, namely, that Kiliaen van Rensselaer died not in 1646, as stated by O'Callaghan, Brodhead, and all other writers, but some time prior to August, 1644, and perhaps as early as the fall of 1643, when the patroon's letters to the colony, published in the "Van Rensselaer Bowier Manuscripts," ceased.— See Van Laer's translations of the "Minutes of the Court of Rensselaerswyck, 1648-1652," p. 11.

9. "History of Troy and Rensselaer County, N. Y.," (1925), pp. 45-46.

10. Van Laer, "Minutes of Court of Rensselaerswyck," p. 11.





Van Rensselaer Manor House.





The patroon did not take Governor Stuyvesant's ruling meekly, after the arrest of Van Slichtenhorst. The question of the right of Stuyvesant to declare that the village (Beverwyck) was not within the jurisdiction of Patroon Van Rensselaer was vigorously debated by the representatives of the latter before the States General; and the patroon was eventually upheld.<sup>11</sup> And when New Netherland passed to the English in 1664, the Van Rensselaer estates were confirmed to the family, all that was asked of Jeremias van Rensselaer, then in residence, being that he renew his patent under the Duke of York, and, with his people, take the oath of allegiance to the English crown. The family remained in possession of an immense manorial estate throughout the English period; Stephen van Rensselaer, who was Major-General of Militia, and in command of American forces on the Niagara frontier during the War of 1812, possessed nearly one thousand farms of one hundred and sixty acres each.<sup>12</sup> At all events, he leased that number to tenants, on long terms at nominal rents, and was never arbitrary with his tenants. Although rents remained long unpaid, it is said he never disturbed his delinquent tenants; hence he "was revered and respected even as a landlord."<sup>13</sup> But trouble began with his death, in 1839. The estates passed to his sons, Stephen and William P., the former taking the western portion (mainly in Albany County), and

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11. The directors of the West India Company afterwards repudiated Stuyvesant's action and on April 2, 1674, declared: "That the above named Patroon Rensselaer and co-partners have been already, from the year XVIc and thirty, and are true owners of the above named hamlet, named *Beverwyck* or *Willemstadt*, and that the possession by their late Director could not take away nor diminish said ownership; declaring therefore that the above named Company has no right, action, nor pretension thereto, leaving the right of ownership in the above-named Patroon and associates."—See "Documents Relating to Colonial History of New York," 2: 558, 560-61, quoted by Van Laer in "Preface of Minutes of the Court of Rensselaerswyck 1648-52," pp. 18-19.

12. "History of Troy and Rensselaer County, N. Y.," 1925, p. 48.

13. *Ibid.*



the younger son the eastern portion (mainly in Rensselaer County). An effort was made to collect arrearages from the tenants, but the latter, "fearing a quarter sale forfeiture, which had never been exacted by the late patroon,"<sup>14</sup> organized to protect their own interests. They tried to purchase all the reservations of their leasehold properties, and terminate the tenure. The landlords, however, declined to consider any such proposals. Then the attitude of the tenants became sterner. The Anti-Rent Association was organized in 1839, and the agitation went from bad to worse, being extremely heated between 1843 and 1847—attended, indeed, by bloodshed. It became almost a State-wide political issue, for it is said that "in the Legislature of 1842 to 1847, about one-eighth of the members were elected in the interests of the Anti-Renters."<sup>15</sup> Two of the rioters were sentenced to be hanged, but were reprieved; and while the judicial proceedings chilled the Anti-Renters, it was quite evident that the manorial system was not likely to have much longer life. The Governor, Silas Wright, who reprieved the convicted rioters, commuting their punishment to imprisonment for life, condemned the manorial system of land tenure "as inconsistent with other institutions of the State." He recommended that an amicable

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14. Stephen Van Rensselaer, the last patroon in full authority, was born in New York, Nov. 1, 1764. He was fifth in descent from the first Killian. His father, and namesake, replaced the original manor house with a finer one in 1765, and took the patriot side in the struggle with Great Britain. . . . Though his lordship (patroonship) had ended with the colonial government, his estates . . . were enormous, including at his death over 3,000 farms in Rensselaer and Albany counties, or some 436,000 acres. These were charged at a moderate annual payment, which he was often careless in collecting. . . . He did nothing to amend the cumbrous system of land tenures on his enormous estates, nor to mitigate the grievances of his tenants, except to be easy with the unfortunate. At his death, arrears of rent were said to amount to \$400,000. These were not remitted as the farmers expected, and the troubles at once began, which are famous in the history of the State, and as a result of which the estate was broken up.—E. P. Cheyney's "Anti-Rent Agitation," 1887, quoted by "Nat. Cyclop. of Am. Biography," 2. 397.

15. "History of Troy and Rensselaer County, N. Y." (1925), p. 49.

and constitutional" way be found to end it, and suggested that renewed efforts be made by the tenants to become the owners in fee. Subsequently, Governor Young pardoned the leading Anti-Renters on the ground that their offenses were political. The Van Rensselaers were unable to collect their rents, and in 1854 were so tired of the strife that they sold most of the manor to Walter S. Church, of Albany, "who brought at least one thousand suits of ejectment in Rensselaer County and recovered many judgments."<sup>16</sup> Stephen van Rensselaer, the last of the patroons, died in 1868, and the remainder of the manor then passed out of the possession of the Van Rensselaer family. During the last fifty years most of the leases have been legally discharged, "but in many instances ground rents are still being paid or remain as a bar to clear titles."<sup>17</sup>

It is of interest to state that the original manor house of the Van Rensselaer family is still standing. In 1886, the historic structure was marked, a tablet being then placed on one of its walls to show the unique place of the Van Rensselaer homestead among historic buildings. The tablet reads:

Supposed to be the oldest building in the United States and to have been erected in 1642, as a manor house and place of defense; known as Fort Crailo. Abercrombie's headquarters while marching to attack Fort Ticonderoga in 1758, where, it is said, at the Contonment east of this house near the old well the army surgeon Richard Shuckburg composed the popular song of "Yankee Doodle."

The house was offered in 1924, as a gift, to the State, and was formally accepted, as a historical memorial, on June 3, 1924, an enabling act having been passed by the Legislature.<sup>18</sup>

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16. *Ibid.*

17. *Ibid.*

18. In Rensselaerswyck manuscripts, the name of the farm on which this fortified Maner house stood is variously given: Cralo, Crailo, Kraelo, Caryloo and Krayloo, the latter corresponding nearly to the modern Dutch form "Kraailoo," which means "crow's woods." The property was named after the Patroon's estate near Huizen, in Holland, which he purchased in 1628. It is probable that only part of the original building remains, and the



Two other patroons of the Dutch period call for notice. The parts taken by Cornelis Melyn and Adriaen van der Donck in the government of New Netherland entailed greater personal risk than that by Kiliaen van Rensselaer, who, indeed, never left Holland. Patroons Melyn and Van der Donck risked even their heads in championing the cause of the people against the arbitrary wills of the vindictive Kieft and the despotic Stuyvesant. Melyn probably was the greater sufferer, though Van der Donck suffered many indignities. Their lives are not here reviewed extensively, because it seems better to reserve such biographical matter for the chapter which deals with the men who were prominent in the legislative bodies that were drawn from the commonalty—the Boards of Twelve, Eight and Nine Men—in the functioning of which the Patroons Melyn and Van der Donck come most worthily into New Netherland records.

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wings were evidently erected at different periods. Brodhead, in his "History of New York" states that "When the Indians attacked and massacred many of the inhabitants of Wiltwyck (Esopus), June 17, 1663, the farmers round about fled to Fort Crailo for protection." Hendrick van Rensselaer made this building his home and died there July 4, 1740, and subsequently his eldest son, Colonel Johannes van Rensselaer, born there in 1708, occupied the building until his death in 1783. Robert, Henry, and James Van Rensselaer, who were born in this building, became brigadier-general, colonel and major, respectively, in the Continental army. For a large part of its existence, the building remained in the possession of descendants of the Van Rensselaers until Mrs. Susan de Lancey van Rensselaer Strong offered it in 1924 as a gift to the State, if provision would be made for its maintenance and preservation as a historical memorial.—*Ibid*, p. 67.



## CHAPTER XIV. DUTCH MAGISTRATES.

### The Governor's Council.\*

With the coming of Peter Minuit, as Director-General, in 1626, all governmental authority—executive, legislative and judicial—was vested in the Director and Council. The Court of Director and Council was the only one in the province, and appeal from its judgments lay to the States General, or the Court of Holland. In 1629 the system of Patroon courts was authorized, and appeals from them lay to the Court of the Director and Council. With the expansion of the judicial system in subsequent years, the Governor's Council became the highest court of the province, with appellate and admiralty jurisdiction. Appeals lay to them from decisions of local or inferior courts. The members of the Council of the Director-General could not be sued before, and were not amenable to the municipal courts.<sup>1</sup> Although the councillors held office only at the pleasure of the Director, and had little independent authority, the body contained some capable men. The

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\*AUTHORITIES—Werner's "Civil List of New York," 1888 ed.; "Collections of New York Historical Society," Second Series; "Report of Andraes Hudde Dutch Colonial Records," N. Y. Hist. Soc. Coll.; "History of New Netherland," by O'Callaghan; "Legal and Judicial History of N. Y.," by Chester; "Albany Records and Holland Documents"; Brodhead's "History of New York"; Bryant's "History of United States"; Westervelt's "Indians of Bergen County, N. J."; Hallam's "Constitutional History of England"; Smith's "History of New York"; "Voyages of De Vries," Collections of N. Y. Hist. Soc.; Chamber's "Encyclopedia"; "Minutes of the Court of Fort Orange and Beverwyck, 1652-56, 1657-60," by Van Laer, published by Univ. State of N. Y., 1920, 1923.

1. Appeals lay to them from decisions of local or inferior courts. The members could not be sued before, and were not amenable to such inferior courts. Their independence of the Governor was, however, very trifling; they may be said, indeed, to have held their office purely at his pleasure, as in one instance he caused a file of soldiers to eject summarily the Vice-Director . . . from the council chamber, for opposition to his will, and, on a different occasion, it is alleged, he caned another member of the Board.—Werner's "Civil List of N. Y.," 1888 ed., p. 361.



members of this highest court of the Dutch period were as follows:

1626—Isaac de Rasieres, Peter Blyvelt, Jacob Elbertsen Wissinck; Jan Jansen Brouwer, Symon Dircksen Pos, Reynert Harmansen.

1630—Peter Blyvelt, Reynert Harmansen, Jan Jansen Myn-dertsen, Jacob Elbertsen Wissinck, Symon Dircksen Pos.

1636—Jacob Jansen Hesse, Martin Gerritsen van Bergen, Andries Hudde, Jacques Bentyn.

1636—Andries Hudde, Claes van Elslant, Jacobus van Curler.

1638—Johannis la Montagne.

1639—Johannis la Montagne, Ulrich Lupold.

1642—Johannis la Montagne.

1647—William Kieft, ex-director; Lubertus van Dincklage, vice-director; Johannis la Montagne, Brian Newton, Paulus Leendertsen van der Grist, Jacob Loper, Jeimer Tomassen, Jan Claessen Bol, Adriaen Keyser.

1648—Lubertus van Dincklage, Johannis la Montagne, Brian Newton, Paulus L. van der Grist, Adriaen Keyser.

1650—Lubertus van Dincklage (forcibly expelled Feb. 28, 1651); Johannis la Montagne, Brian Newton, Adriaen Keyser.

1652—Johannis la Montagne and Brian Newton.

1653—Johannis la Montagne, Brian Newton, Cornelis van Werckhoven, who returned to Holland in 1654, Nicasius de Sille, first councillor.

1655—Nicasius de Sille, Johannis la Montagne (appointed Vice-Director at Fort Orange, Sept. 28, 1656).

1657—Nicasius de Sille, Peter Tonneman.

1658—Nicasius de Sille, Peter Tonneman, Johannis de Decker.

1659—Nicasius de Sille, Peter Tonneman (went to Holland in fall of that year), Johannis de Decker (absent from the country from July 29, 1659, to July 12, 1660), Cornelis van Ruyven.

1660—Nicasius de Sille, Johannis de Decker, Cornelius van Ruyven.

1664-1673—Under English rule.

1673—Cornelis Evertse, Jacob Benckes, Anthony Colve, Abraham van Zyll (a naval officer), Cornelis Steenwyck (Sept. 19).

Isaac de Rasieres, the first name listed above, was the first Provincial Secretary. He came out with Minuit in 1626, but returned to Holland in 1628. While in the colony, however, his record was good. He was a Walloon, protege of a director of the West India Company, Samuel Blommaert, who was one of the first to grasp a patroonship. There was friction between the Plymouth Plantation and New Netherland, and after some unsatisfactory diplomatic correspondence between the two governors, Minuit and Bradford, De Rasieres was deputed by Minuit to head a Dutch commission to New Plymouth. He entered that plantation with all the dignity of a prince. "When they landed near one of the outposts of the Plymouth colony, the echoes of the forest and the attention of the Pilgrims were awakened by the braying of trumpets at the lips of sturdy Dutchmen." With the same ceremony the commissioners entered New Plymouth, a graphic description of which De Rasieres has left. For two days he sat at the table of Governor Bradford, having the company also of Elder Brewster, Miles Standish, and other passengers of the "Mayflower." Bradford describes De Rasieres as "a man of fair and genteel behaviour." The two were able to establish a better understanding between the colonies, although the Dutch commissioner could not induce Bradford and the Pilgrims to "leave their more sterile soil and make their home in the beautiful and fertile country on the banks of the Fresh-Water River, under the jurisdiction of New Netherland."

It is to be regretted that the opinions recorded of most of the early officials of New Netherland are found in remonstrances, wherein faults are shown, and extenuating circumstances or better qualities obscured. The Remonstrance of the Nine Men said of Brian Newton, who for many years was a member of the Council, that he could say nothing but "yes" to all recommendations of the governor. Adrian Keyser "lets God's water run over God's field." Jelmer Thommassen and Paulus Lenaertsen were sea captains, and could hardly



have graduated in law at sea. Monsieur La Montagne, another member of the Council, was "very much suspected by many," seeing that he was "very much indebted to the Company."<sup>2</sup> On the other hand, Van Tienhoven when in Holland as attorney for Stuyvesant replied to the Remonstrance of 1649 by pointing out that "Those who complained about the haughtiness of Stuyvesant are such as seek to live without law or rule.", In condemnatory reference to the signers of the Remonstrance, members of the Board of Nine Men, he continues: "Van der Donck had been in the service of the proprietors of Rensselaerwyck," but had not been retained long; Stevenson "had profited in the service of the Company"; Elbertson was "indebted to the Company," and would be "very glad to get rid of paying"; Loockermans had been "a cook's

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2. Sometimes the Commissary, Adrian Keyser is admitted into the Council, who came here as Secretary. This man had not forgotten much law, but says that he "lets God's water run over God's field." He cannot and dares not say anything, for so much devolved upon him that it is best that he should be silent.

The Captains of the ships, when they are ashore, have a vote in the Council: as Jelmer Thommassen and Paulus Lenaertsen, who was made Equipment Master upon his first arrival and who has always had a seat in the Council and is a free man. What knowledge these people who all their lives sail on the sea, and are brought up to ship work, have of law matters and of the disputes of landmen anyone can easily imagine. Besides the Director keeps them so in debt that they dare not speak in opposition to him. . . . But they have not fared badly; for though Paulus Lenaertsen has small wages, he has built a better dwelling house here than anybody else. How this has happened is mysterious to us; for if the Director has knowledge of these matters, he is nevertheless as quiet as Paulus Lenaertsen rises as he is inattentive to anybody else, which causes suspicions in the minds of many.

Monsieur La Montagne had been in the Council in Kieft's time, and was then very much suspected by many. He had no commission from the Fatherland, was driven by the war from his farm, is very much indebted to the Company, and therefore is compelled to dissemble. But it is sufficiently known from himself that he is not pleased and is opposed to the administration.

Brian Newton, lieutenant of the soldiers is the next. This man is afraid of the Director and regards him as his benefactor; and besides is very simple and unexperienced in law. As he does not understand our Dutch language, he is scarcely capable of replying to the long written opinions, except that he can and will say *yes*.—Collections of New York Historical Society, Second Series, Vol. II, 305.



mate," and for his elevation to the status of a prosperous trader he "owed gratitude to the Company, next to God"; Kip was a tailor who, having nothing had never lost anything. Most of the opinions were given in the heat of partisan strife, and thus are unreliable.

Taking the Council as a judicial unit, its functioning does not bring as honorable a record into New York law as that of the inferior courts. From the beginning to the end of Dutch rule in New Netherland, the Council was dominated by the Directors-General, who did not hesitate to interpret the law to meet their own desired ends. Hence, while those members of the Council who served long were probably capable men, one cannot evade the thought that they were probably not scrupulously honest. Dr. Johannis la Montagne, "a learned Huguenot physician," was a member from 1638 to 1656, when he was appointed Vice-Director at Fort Orange. During the administration of William Kieft he was the *only* councillor, which status can hardly be placed to his credit, when one remembers that the notoriously unfair and narrow-minded governor, Kieft, held two votes to his one, and so "enacted laws, levied fines, or inflicted penalties according to his will." Dr. la Montagne, therefore, did not improve his record during the Kieft administration. But nine years of subservience to Stuyvesant brought him promotion to the Fort Orange command, where he could more freely exercise his own will.<sup>2a</sup>

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2a. Johannes la Montagne, as Vice-Director at Fort Orange, was President of the Court at Beverwyck, which to all intents superceded that of Rensselaerwyck in 1652, when Stuyvesant, by proclamation on April 10, 1652, erected the court of Fort Orange and the village of Beverwyck in the main settlement of the colony of Rensselaerswyck. In the two volumes of his translations of the minutes of the court of Fort Orange, 1652-1660, State Archivist Van Laer writes:

"The erection of the court was the final act in the high-handed proceedings whereby Director Stuyvesant brought to a close the long standing controversy between the Dutch West India Company and the authorities of the colony of Rensselaerswyck regarding the jurisdiction of the territory around the fort. . . .



The governors seemed very reluctant to leave authority to the Council. When Conrad Notelman arrived in New Amsterdam in 1631, to supercede Minuit's schout, Lampo, he also brought letters recalling Minuit. When the governor departed early in 1632, he resigned his authority to his Council, but placed his secretary, Van Remund, at its head, although the latter was not regularly a member of the Council.

Of the Council it may be said that it was a convenient place in which to deposit the chronic office-holder. Several who were appointed by the governor to the Council graduated to it from some other government office, or from it to some other official post. In the final analysis, they were "Company servants"; and their decisions in this, the highest, court do not show independent opinion, save that of the Director-General.

Fortunately, for personal record, some of the magistrates of this court had more scope in other courts and public responsibilities. Several found independence and credit in the

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"The newly created court, which was termed a *Kleine Banck van Justitie*, an inferior bench of judicature, was a court for the trial of civil and minor criminal causes, from which an appeal lay to the Director-General and Council of New Netherland. The court was composed of the *commies*, or commissary of the fort, afterwards bearing the title of vice-director, and a variable number of *commissarissen*, or local magistrates, often designated in English documents of the period as 'commissaries.' Of these, the *commies*, who acted as prosecuting officer, and who represented the company, was appointed for an indefinite term of years directly by the Director-General and Council of New Netherland, while the magistrates, at least in theory, represented the people, and were appointed annually from a double number chosen by the inhabitants. When sitting as a criminal court, the officer (Vice-Director or *Commies*) presided and demanded justice of the magistrates, who not only found whether the accused was guilty, but also determined the penalty that should be imposed (upon) him.

"The jurisdiction of the court comprised Fort Orange, the village of Beverwyck, Schenectady, Kinderhook, Claverack, Coxsackie, Catskill, and, until May 16, 1661, when a court was established at the Esopus, also the region around Kingston. Excluded from the jurisdiction was the colony of Rensselaerswyck, which maintained its own court, side by side with that of Fort Orange and the village of Beverwyck until 1665, when, by order of Governor Richard Nicolls the two courts were consolidated. A record of the court of Rensselaerswyck for the period 1648-52, when it was presided over by Van Slichtenhorst, has been preserved, but no record exists of judicial proceedings after the last mentioned date. Considering that the



citizens' bodies, the Board of Twelve, Eight and Nine Men, or in the inferior courts. Reference will be therefore found in succeeding chapters to the public service of Dr. Lubbertus van Dincklagen, Paulus Leendertsen van der Grist, Peter Tonneman, Jacobus van Curler, Nicasius de Sille, and others.

Andraes Hudde, of the Council of 1636, succeeded Jan Jansen as commissary at Fort Nassau in 1645 and had a somewhat exciting year or so of negotiation with the encroaching Swedes. When he attempted to begin a new settlement near the site of the present city of Philadelphia, only a mile or so north of Fort Nassau, on the west shore of the river, he was ordered to desist by a deputy of the Swedish governor, who was surprised that Hudde had shown not "the least respect to Her (Swedish) Majesty's magnificence, reputation and highness," by such "gross violence" upon her domain.<sup>3</sup> Hudde had to retreat from this position, but held tenaciously to trading operations along the river until the Dutch, in 1655, ousted the Swedes altogether and ended the history of New Sweden. In that responsibility, Andraes Hudde probably did better than as a member of the Council. He was Provincial

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majority of the tenants of the patroon had become burghers of Beverwyck and had their cases tried before the local court, it is fair to assume that the court of the colony of Rensselaerswyck was rarely, if ever, called upon to exercise its judicial functions after 1652, and that therefore no record was kept."

Vice-Director La Montagne erected the second courthouse at Beverwyck, beginning that work in 1657. He was the third to preside over the court of Fort Orange and Beverwyck. Johannes Dyckman, who was Commissary at Fort Orange from 1651 to June 1655, was President of the Court from its establishment to the latter date; Johan de Deckere was the next presiding commissary, his name first appearing on the minutes of the court on July 13, 1655, and disappearing on July 17, 1656. Johannes la Montagne "offered to go to Fort Orange on August 22, 1656, was appointed the same day and received his commission as Vice-Director on September 22nd of that year." His name was first signed to the minutes of the court of Fort Orange on October 13, 1656, the entries being in the handwriting of Johannes Provoost, who was clerk of the court during the administration of La Montagne.—See Van Laer's "Translations of the Minutes of the Court of Fort Orange and Beverwyck, 1652-56, 1657-60." Vol. I-8.

3. Hudde's Report, from Dutch Colonial Records, in N. Y. Hist. Soc. Coll., Vol II, 431.



Secretary in 163-, and Surveyor-General from 1642 to 1648, and again in 1654. Claes van Elslant was Surveyor-General from 1648 to 1654.

Adriaen Keyser was Provincial Secretary under Stuyvesant, and followed the line of least resistance. Cornelis van Werckhoven was a patroon for a few years. "His Honor, the Councillor Johan de Deckere" was a conscientious magistrate; he once refused to give his opinion of an instrument approved by Governor Stuyvesant, "because the said proposition were addressed only to the Honble Director-General of New Netherland, and not to the Noble Director-General and the Honorable Council, as it ought to have been." He probably was the "Jonas de Decker," who is listed in State Records as "Comptroller" of the Port of New York in 1657. For a year he was the commissary at Fort Orange—July, 1655, to July, 1656,—and during that year presided over the court of that place. Cornelis Steenwyck, whose name is last in the last Council (1673) of New Netherland, has a worthy record of public service. Like many other New Netherlanders, he was not unwilling to serve the province to the best of his ability, even after the government had passed to the English. He was several times mayor of New Amsterdam and New York, and once, in the absence of Governor Lovelace, was appointed acting governor. In the latter responsibility he thought it to be his duty to appeal to the citizens to aid in fortifying the town, even though the fortifications might be used only in repulsing attack by Dutch forces. Addressing the citizens in English, he said:

"As the Governor has been pleased to put the Honourable Mayor and Aldermen for to look to the best of the town and the inhabitants of t'same, what they sall thing fit for the best thereof, he being but ordered sall always be found a willing and faithful subject."

Cornelis Steenwyck was a schepen of New Amsterdam in 1658 and 1660, was a burgomaster in 1662, and also in 1664,

when the city was surrendered to the English. He was continued as such in 1665 and 1666, and was again mayor in 1668-70, and again in 1682-83. He was orphan master, an office like that of Surrogate, in 1661, 1662 and 1663. That he was loyal to the Dutch to the end is indicated by his attendance, as a delegate from New Amsterdam, at the convention of Dutch towns in April, 1664. Not many members of the Council have as worthy a record as that of Cornelis Steenwyck, the last Councillor elected.

PROVINCIAL SECRETARIES AND ATTORNEYS-GENERAL.

(*Opper Koopman and Schout-Fiscal*).

Closely connected with the Council were the chief officers of the Province; the Opper Koopman, who was commissary, bookkeeper, and general secretary of the governor; and the Schout-Fiscal, who was public prosecutor, sheriff, legal advisor, customs officer and much else less dignified. They had power in the Council, and, as has been shown, several were members of that court. The secretaries of the province were:

Isaac de Rasieres, appointed July 27, 1626; Jan van Remund, in 1628; Andraes Hudde, in 163—; Cornelis van Tienhoven, on April 1, 1638; Adriaen Keyser, in 1649; Jacob Kip (acting), in 1650; Cornelis van Tienhoven, in April, 1651; Carel van Brugge, in 1652; Cornelis van Ruyven, in Nov., 1653; Matthias Nicolls, in 1664; Nicolas Bayard, on August 20, 1673.

They were the clerks of the Council and courts, and were *ex officio* members of the Council when a governor felt so disposed. Isaac de Rasieres, Andraes Hudde, Adriaen Keyser and Jan van Remund have already been noticed. The capable but disreputable Cornelis van Tienhoven comes into review a page or two further on. Cornelis van Ruyven served the exacting Stuyvesant with evident satisfaction. Once, after the governors of the South River colonies, Alrichs and Beeckman, had failed in their negotiations with the Maryland en-



voys, Stuyvesant sent Van Ruyven and Marten Cregier to supercede them. Van Ruyven was Receiver-General (or its equivalent) of the Port of New York from June, 1656, to September, 1663, and again held that responsibility under the English in 1668. In September, 1673, Governor Colve sent him to Holland, carrying an urgent appeal for military reinforcements. From 1669 to 1673 Van Ruyven had been a member of the English Council of the Colony of New York, but when the Dutch returned he, of course, dropped his allegiance to the English.

Nicholas Bayard, who was provincial secretary during the brief administration of Governor Colve, was again Secretary of State in 1688. He became quite prominent, indeed notorious in one case. Bayard was Receiver-General of the Port of New York in 1663-64, and one of its four commissioners in 1689. In 1665 he was clerk of courts in New York; was mayor of New York in 1685; and was an influential member of the Council of the Colony of New York for many years, 1685, 1687-88, 1691-98.

Following the collapse of the Andros administration, Bayard was one of the leading figures of an exciting period, to which some reference will be made in a later chapter. He was the most influential of those who almost forced the governor to sign the death warrant of Leisler, though the latter was Bayard's kin, by marriage. Bayard was one of the most active members of the Council of New York at the time of the dethronement of James II. Brodhead describes him as "a wealthy and respectable merchant, but a hot-headed militia captain, quite unfit, as his own letters show, for important command in a time of emergency" like that of the interregnum between the arrest of Andros and the appointment of another governor, by the incoming royalties, William and Mary. Leisler seized the government, in New York, and held the military forces well in hand, more it seems because of the possibility of attack by the French, with which nation England

was at war, than of rebellious intent. And in so doing he could hardly be considered a usurper, unless Bradstreet, who arrested Andros, be so classed. Leisler, however, did indiscreet things later, defying the authority of the next and lawful government. For this he was arrested, and, with six of his followers, sentenced to death. All were reprieved, however, until the King's pleasure could be made known. Meanwhile, Governor Sloughter arrived, and called a General Assembly. This was composed mainly of the party Leisler had ousted, and they were disposed to be vindictive. Moreover, Bayard was a member of the Governor's Council. While several petitions, begging that Leisler be pardoned, reached the governor, the party in power demanded his execution. The latter won, the deciding moment being when Governor Sloughter was the guest of Bayard. Quoting Smith's "History of New York": "Tradition says that when no other means could prevail with him (Sloughter), a sumptuous feast was prepared, to which Colonel Sloughter was invited. When his reason was drowned in his cups, the entreaties of the company prevailed on him to sign the death warrant; and before he recovered his senses the prisoners were executed," on May 16, 1691. But Nemesis came to Bayard in one of his own pieces of legislation. The opposition did not pass with Leisler's death, the political parties, White People and Black People (by which the anti-Leisler and Leisler factions were respectively known) becoming increasingly bitter. An attempt by the White People, led by Bayard and others, to oust the opposing party by irregular means in 1701, resulted in the arrest of Bayard, who had made himself liable to the penalties of an act passed in the first Assembly, and said to have been mainly of his own contriving, making it treason "to disturb the peace, good or quiet of the province by force of arms, or otherwise." He was found guilty, and may have lost his head had not the new governor, Lord Cornbury, arrived in the nick of time. Du Simitiere, wrote: "A tradition is preserved that Bayard



was respited from time to time, by the payment of money to Lieutenant-Governor Nanfan. But his children, tired at last of these costly appeals to their filial piety, expostulated with their father for not consenting to be hanged, as the cost of saving him would come to be, they feared, their pecuniary ruin." (See N. Y. Hist. Soc. Coll., 1868).

Thus, it is clear that the last of the provincial secretaries of New Netherland did not prove to be as worthy as some others of the Dutch period.

The Schouts-Fiscal of the Province of New Netherland were:

Jan Lampo, appointed in 1626; Coenraad Notelman, in 1632; Lubertus van Dincklage (Dincklagen), in 1633, Jacques Bentyn, in 1636, Ulrich Lupold, on March 28, 1638; Cornelius van der Huyghens, July 13, 1639, Heinrich van Dyck, on May 22, 1647; Cornelis van Tienhoven, on March 27, 1652, Nicasius de Sille, on June 26, 1656; William Knyff, on December 15, 1673.

Some of these public officials of the direct personnel of the governor—members of the Council, the *opper koopman* or provincial secretaries, and the *schouts-fiscal*, or attorneys-general—were at some time prominent in movements begun by and for the commonalty; but in general they were too close to the governor, and too much subordinated, to be much more than his mouthpieces, though it is recorded that "so far as reports have been handed down, they were, with perhaps a single exception, upright men of capability." The one exception is stated to have been Schout-Fiscal Van Tienhoven, although, despite his "thoroughly bad character," even he might be given some credit, for "none of his contemporaries surpassed him in natural ability for public affairs." De Vries did not have a very good opinion of at least two officials of Van Twiller's staff—Secretary van Remund and Fiscal Notelman, who boarded the patroon's vessel in 1633, to appraise his furs for duty. Notelman, who was "somewhat of a *bouser*,"

clamored for wine, protesting that "he was dry, and would go to the cabin." Both officials were finally sent ashore assured that De Vries was "astonished that the West India Company should send such fools to the colonies, who knew nothing but how to drink themselves drunk." Van Tienhoven was notorious in this respect; yet he cannot possibly be called a fool. He was described as "cautious, subtle, intelligent and sharp-witted"; "expert in dissimulation"; "gives everyone who has business with him . . . good answers"; but in the same "Representation" are made known many of his faults.<sup>4</sup> Van Tienhoven, in 1633, came out to New Amsterdam as a book-keeper, in the West India Company's service. In 1638 he was holding the two offices of *opper koopman* and *schout-fiscal*, at a salary of about \$250 a year, plus the fees of his legal office. His subtlety of mind, and, it would seem, elasticity of conscience, brought him favor with both Kieft and Stuyvesant; hence he may be deemed to have been a capable official. Indeed, but ultimately "his impure private life and his ques-

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4. The Secretary, Cornelis van Tienhoven, comes next. Of this man very much could be said, and more than we are able, but we will select here and there a little for the sake of brevity. He is cautious, subtle, intelligent and sharpwitted—good gifts when they are well used. He is one of those who have been longest in the country, and every circumstance is well known to him, in regard both to the Christians and the Indians. With the Indians, moreover, he runs about the same as an Indian, with a little covering, and a small patch in front, from lust after the prostitutes, to whom he has always been mightily inclined, and with whom he has had so much to do that no punishment or threats of the Director can drive him from them. He is extremely expert in dissimulation. He appears to all to be asleep, but it is in order to bite, and shows externally the most friendship toward those whom he most hates. He gives everyone who has any business with him—which scarcely no one can avoid—good answers and promises of assistance, yet rarely helps anybody; but twists continually and shuffles from one side to the other. Except to his friends—the priests—he is in his words and conduct loose, false, deceitful and given to lying, promising every one, and when it comes to perform, *never at home*. . . . The whole country, save the Director and his party, cries out against him bitterly, as a villain, murderer and traitor, who must leave the country.—"Representation of New Netherland," see Collections of the New York Historical Society, second series, Vol. II, 306.



tionable public conduct compelled the West India Company to order Governor Stuyvesant to remove him from office immediately." This happened in 1655. "He disappeared from New Amsterdam overnight, and, as his hat and cane were discovered on the shore of the bay, it was believed by some that he had committed suicide, but there has always been a suspicion that he decamped from the country, carrying with him some proceeds of his dishonesty."

A man of far different type was his successor, Nicasius de Sille, scion of a distinguished Belgic-Dutch family. He was well educated, was considered in Holland to be "an expert and able statesman," a man "well versed in the law," and moreover, "acquainted with military affairs, and otherwise qualified for public service." The College of Nineteen delegates of the West India Company in Holland commissioned him, in July, 1653, as "First Counsellor" to the Director-General of New Netherland. He brought high credentials<sup>5</sup> to New Amsterdam, and was gladly admitted into Stuyvesant's official family. De Sille was an efficient aide of the governor in the military expedition against New Sweden, and after Van Tienhoven was dismissed as schout-fiscal, De Sille was the official best fitted to bring the office into good standing again. The burgomasters and schepens of New Amsterdam seized the opportunity that presented itself when

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5. We have deemed it advisable, for the better administration of New Netherland, to strengthen your Council with another expert and able statesman; and whereas Nicasius de Sille, the bearer of these open letters, did apply to us for this appointment, we have, trusting in the good reports of his character and confiding in his talents, appointed him First Counsellor to the Director, to reside as such at Fort Amsterdam, and deliberate with you on all affairs relating to war, police and national force; to keep inviolate all alliances of friendship and commerce, and, if feasible, to increase these; to assist in the administration of justice, criminal as well as civil, and, further, to advise you in all events and occurrences which may be brought forward. We address this to your Honors that you might be informed of this our intention, and to have this Nicasius de Sille acknowledged and respected by all the inhabitants, as, in our opinion, the service of the Company shall hereby be promoted.—Quoted in "History of New Netherland," by O'Callaghan, Vol. II, 236.

Van Tienhoven disappeared by petitioning the governor to separate the offices of schout-fiscal and city schout; but their arguments lost force when De Sille was appointed to both. He relinquished the city office in 1657, but continued as schout-fiscal and also as a member of the Council, or highest court, until the English took possession. From 1657 he was interested in establishing the town of New Utrecht, of which he was one of the nineteen first settlers. He acted as schout of that town, and was the secretary of the "five Dutch towns" in 1674. He had literary talent; "was one of the few poets of New Amsterdam who left examples of their work"; and wrote the "History of the First Beginning of the Town of New Utrecht."

Stuyvesant had the assistance of another learned counsellor, Lubertus van Dincklagen, "a man of superior education, a doctor of laws, and an able and accomplished jurist." He had been schout-fiscal under Van Twiller, and was the most capable government official in New Netherland, probably, in the first years of Stuyvesant's administration. Van Dincklagen was appointed as Vice-Director-General, the first to hold that office, his commission as such coming direct from Holland. By virtue of this office Van Dincklagen was the president of the Council, taking over authority that had formerly been vested in the governor. The former was a man of high character, and was sympathetic with the movement initiated by the Board of Nine Men, in 1649, to demand representative government. Indeed, he abetted the remonstrants in their appeals to Holland, and would not be a party to some of the arbitrary actions of the vindictive Stuyvesant. Especially, he sympathized with Patroon Melyn, who was shamefully persecuted by the governor in 1650. Stuyvesant would not brook opposition, and when the moment was opportune, was wont to wield his rod of office with savage vigor. After he had disposed of Melyn, he dealt with Van Dincklagen. In February, 1651, he appeared in the Council Chamber at the



head of a file of soldiers, who, at his command, expelled Vice-Director Van Dincklagen from the chamber. Van Dincklagen was imprisoned for some days, and dismissed from all offices, Stuyvesant taking no heed of the fact that the Vice-Director's commission had come direct from Holland. Upon release, Dr. Van Dincklagen fled to Staten Island, fearing that the Governor might next demand his life. He took refuge with Melyn, who had fortified his manor. There they were both safe for a while. Van Dincklagen appealed to Holland, and Stuyvesant was promptly commanded to reinstate him.<sup>6</sup> It seems, however, that he failed to do so, or, if he did so, that Van Dincklagen would not accept reinstatement; for the latter does not again come into official records of the Council. Apparently Van Dincklagen was of somewhat timid disposition, and for long had been reluctant to rouse the ire of the choleric Stuyvesant.<sup>7</sup>

Another of the official family of Stuyvesant was destined to go out of favor with Van Dincklagen, and for the same

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6. But the domineering governor met his match this time. Van Dincklagen was held in high esteem by the authorities in Holland, alike as a man and as a jurist. Orders promptly came to Stuyvesant before the close of the year to reinstate him in office, but, meantime, he had moved to Staten Island, and he does not appear to have again participated in the deliberations of the Council.—Chester's "Legal and Judicial History of New York," Vol. I, 112.

7. The Vice-Director, Lubbert van Dincklagen, has for a long time on various occasions shown great dissatisfaction about many different matters, and has protested against the Director and his appointed Councillors, but only lately, and after some others of the chief officers had done so. He was, before this, so influenced by fear, that he durst venture to say nothing against the Director, but let many things pass by and submitted to them. He declared afterwards that he had great objections to them, because they were not just, but he kept silence for the sake of peace, as the Director had said in the Council, that he would treat him worse than Wouter van Twiller had ever done, if he were not willing to conform to his wishes. This man then is over-ruled.—"Representation of New Netherland," see Collections of the N. Y. Hist. Soc., 2nd series, Vol. II, 305.

(Van Twiller's administration was marked by drunkenness in him and most of his officials. Bryant writes as follows: "It was not to be wondered at that an administration conducted in so slipshod and absurd a fashion should receive the sharp censure of the few capable men about the governor; and it was through Van Twiller's treatment of one of these, Van



reason. Hendrick van Dyck, who had come out with Stuyvesant in 1647, or in 1646, when he was commissioned as schout-fiscal, was also won to the popular movement. The Board of Nine Men referred somewhat favorably to him in their Remonstrance in 1649<sup>8</sup>; and Van Dyck supported Van Dincklagen in 1651. They were both detected in the act of drafting another remonstrance, protesting against Stuyvesant's evasion of the States General's Provisional Order of 1650. Van Dyck was able to retain membership in the Council until 1655, but Van Tienhoven was appointed schout-fiscal in his place in 1652.<sup>9</sup>

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Dincklagen, the schout who now occupied Notelman's place, that the government was suddenly checked in the midst of its abuses. For Van Dincklagen, having ventured to express his contempt too openly, was sent back to Holland, with large arrears of salary unpaid, and in a condition giving a decided right to complain, which he did not hesitate to do. To such purpose did he represent the governor's conduct before the board of Amsterdam directors, that they determined at once upon Van Twiller's recall.")

8. With Melyn, on Staten Island, Van Dincklage, the Vice-Director, also found a refuge from the violence of Stuyvesant. The Vice-Director busied himself in preparing a new protest to the States-General on behalf of the colony, when Stuyvesant ordered that he be expelled from the Council. Van Dincklage refused to be thus disposed of, on the plea that he held his commission not from the Director but from Holland. Stuyvesant arrested him for some days, and he felt that his life was not safe on Manhattan Island. . . . Van Dyck, the fiscal, or attorney-general, who, with Van Dincklage, was detected in drawing up the protest, was excluded from the Council, and his duty reduced to that of a mere scrivener. . . . Finally, he was charged with drunkenness and removed from office. The Secretary, Van Tienhoven, was appointed in his place; the "perjured secretary," wrote Van Dyck, "who returned here contrary to their High Mightinesses' prohibition; a public, notorious, and convicted whoremonger and oath breaker; a reproach to this country, and the main scourge of both Christians and heathens, with whose sensualities the Director has been always acquainted." "The fault of drunkenness," he adds, "could easily be noticed in me, but not in Van Tienhoven, who has frequently come out of the tavern so full that he could go no further, and was forced to lie down in the gutter."—Albany Records and Holland Documents, quoted by O'Callaghan, Brodhead, and Bryant.

9. There remains, to complete this court-bench the Secretary and the Fiscal, Hendrick Van Dyck, who had been previously an ensign-bearer. Director Stuyvesant had kept him twenty-nine months out of the meetings of the Council for the reason, among others, which his Honor assigned, that he cannot keep secret but make public what is there resolved. He also frequently declared that he was a villain, a scoundrel, a thief and the like. All this is well known to the Fiscal, who does not against him take the right cause, and in our judgment it is not advisable for him to do so; for



Van Dyck opposed Stuyvesant until the end, and seems to have been of a more resolute type than Van Dincklagen; he had seen service in Indian warfare in 1642 and 1644, during the administration of Kieft.

Cornelis van der Huygens, who was schout-fiscal during the greater part of Kieft's administration, left the province with that governor, and was drowned when their ship was wrecked off the coast of Wales.

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the Director is utterly insufferable in word and deed.—Collections of N. Y. Hist. Soc., quoted in Chester's "Legal and Judicial History of N. Y."

9. There was, it seems, a very good reason why Van Dyck should be dismissed from the Council. He had one day in 1655 detected an Indian girl in the act of stealing fruit from his orchard, on his Staten Island farm. He shot her. At that time Stuyvesant was away, and had drawn practically the whole armed strength (600 to 700 men) away, for the reduction of New Sweden. The Indians wished to punish Van Dyck, and the opportune moment was before them. There were other reasons, but the inexcusable action of Van Dyck, angered them, and early one the morning of September 15, 1655, sixty-four canoes brought about 500 warriors to Manhattan Island. They overran New Amsterdam during the day intent upon finding Van Dyck. For hours the frightened burghers and their wives and children were submitted to insolence and outrage, thinking it more prudent not to resist. At last, at sunset, the Indians agreed to paddle over to Nutten (Governor's) Island, and there await the result of the conference between their chiefs and the magistrates. This evidently was unsatisfactory, for they soon attacked again. They detected Van Dyck running to the house of a neighbor, Van der Grist. They "brought him down with an arrow in the breast," and tomahawked Captain Van der Grist. Fortunately, there was still an organized town guard at Fort Manhattan; and this disciplined force repulsed the Indians, and their canoes were quickly lost to sight in the darkness. However, their war-whoops still carried over the water, and soon there was other evidences that the trouble was not over. The denuded Pavonia settlement was put to the torch, and soon there was nothing standing in Hoboken. The men were killed, and the women and children were taken into captivity. Next the Indians turned upon Staten Island, and the only place of comparative safety was Fort Manhattan until Stuyvesant returned with the troops from New Sweden. By that time most of the settlements had been destroyed, crops, stock and all possessions lost, one hundred settlers had been killed, and eighty men, women and children were in the hands of the Indians. Ransom was demanded, and was paid, Stuyvesant feeling that moderation was the better procedure. Both sides kept their word, Pennekeck, chief of the Indians of Achkinkeshaky securing from Stuyvesant an ample supply of powder and lead, and duly releasing the Dutch prisoners unhurt. In November, 1655, the Director and Council rendered an opinion as to the trouble, and what should be done to prevent like calamities in the future. The preamble recognizes that the "all too hasty inconsiderateness of some hot-headed in-

dividuals diverted the Indians," who professed to have been more on the warpath against the Indian tribes of the eastern end of Long Island than against any Dutchman, but the Council seemed to have Van Dyck well in mind. Again, when, in 1660, the Indian chiefs considered terms of peace and amity with the Director-General and Council at the Stadt Huys, the fourth clause agreed upon was as follows:

"That henceforth no war should be commenced for any private action, but if a Dutchman should happen to kill an Indian he shall again be punished with death, and if an Indian happened to kill a Dutchman he should be delivered to the Dutch and also be punished with death."







## CHAPTER XV.

### DUTCH MAGISTRATES: Of the Inferior Courts.

#### The Boards of Twelve, Eight, and Nine Men.\*

In this category ought to be included the advisory councils drawn from the citizenry: the Boards of Twelve Men (1641); Eight Men (1643 and 1645); and Nine Men (1647-52). These bodies were truly representative of the people, though not intended to be so by the governors.

**The Board of Twelve Men**—In 1641, Governor Kieft was becoming perplexed by Indian troubles; and it suited his purpose to share this perplexity with the colonists. So he called a public meeting of citizens, and declared himself disposed to grant them a share in the government. He asked them to nominate twelve freemen, to constitute an advisory council, to aid him, with their advice. The "Twelve Select Men" were cautious in giving advice. The popular feeling was strongly against the wish of the governor to wage war with the Long Island Indians, to revenge the murder of one settler, Claes Smits, who, it seems, had "wantonly murdered" the uncle of his slayer in 1626, and had not been brought to justice by Minuit or succeeding governors. Nevertheless,

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\*AUTHORITIES—"New York Civil List," 1888 edition; "Voyages of De Vries," N. Y. Hist. Soc. Coll.; Bryant's "History of United States"; "Documents Relative to the Colonial History of the State of New York" (Holland Documents); O'Callaghan's "History of New Netherland"; "National Cyclo. of Am. Biog."; Chester's "Legal and Judicial History of N. Y."; "State of Jurisprudence During the Dutch Period," "History of Bench and Bar of New York," Daly; "Records of Burgomasters and Schepens of New Amsterdam"; Lossing's "History of U. S."; Chamber's "Encyclopedia"; Hawthorne's "History of U. S."; "Encyclopedia Britannica"; Van Laer's translations of the "Minutes of the Court of Rensselaerswyck, 1648-1652"; also Van Laer's translations of the "Minutes of the Court of Fort Orange and Beverwyck, 1652-60"; "National Cyclopedia of American Biography"; "History of Westchester County, N. Y." (1925); "Albany Law Journal," paper of Alfred L. Becker on Adriaen van der Donck, the Earliest Lawyer in New York" (1904).



Kieft's rule was absolute, and if he decided in favor of war, the Twelve Select Men knew that he would not be turned from that purpose by any advice they might give. So, while they were very decidedly of the opinion that war should be avoided as long as possible, they thought that, if it should come, it would be well that Governor Kieft should share the danger. They pointed out to him that as the "Honorable Director is as well the ruler as he is the commander of the soldiery," he ought, "to prevent confusion, to lead the van," their place being "to follow his steps and obey his commands." The grim humor of the solemn burghers was probably not unseen by the Director; and he realized that upon his own head rested the responsibility for war. He gave the Twelve Men another chance, convening them on January 21, 1642; but when they demanded popular representation in the government instead of mere advisory capacity, Kieft had no further need of this council, the first representative body constituted within the limits of the present State of New York. The demand of the Twelve Men was not granted, and on February 12, 1642, the body was dissolved. The representatives were:

David Pietersen de Vries, who was president; Jacques Bentyn, Jan Jansen Dam, Hendrick Jansen, Maryn Andriensen, Abram Pietersen, the miller; Frederick Lubbertsen, Jochim Pietersen Kuyter, Gerrit Dircksen, George Rapalje, Abram Planck, Jacob Stoffelsen, Jan Evertsen Bout, Jacob Walingen.

**The Board of the Eight Men**—Governor Kieft concluded peace with the Long Island and New Jersey Indian tribes in March and April, 1643; but the terms were so unsatisfactory that Indians were soon on the warpath again, and Director Kieft found that he again had need of an advisory council. So, in September, 1643, he called a meeting of freemen of New Amsterdam, and asked them to choose "five or six persons from among themselves"

to constitute another advisory board, "to consider maturely the articles which the Director and Council were prepared to propose." Eight men were named on September 13 by Governor Kieft though the freemen claimed the privilege of rejecting any of the Governor's nominees to whom they might object. Objection was made to one nominee, and, another being appointed, the Board of the Eight Men assembled for the first time on September 15, 1643. The previous board had had no legislative authority, but this assembly enacted some legislation, meeting every Saturday for some time. The Eight Men were again convoked on June 18, 1644, and were not dissolved until after August 30, 1645, when peace was concluded with the Manhattans at New Amsterdam. The Eight Men had been more successful and independent of executive control than their predecessors; and they brought the maladministration of Kieft so forcibly before the States General that the governor was recalled and Stuyvesant appointed Director-General. The members of the Board of Eight Men were:

1643—Cornelis Melyn, president; Jochim Pietersen Kuyter, Jan Jansen Dam (who was expelled at the first meeting, Jan Evertsen Bout being named in his stead); Barent Dircksen, Abram Pietersen, the miller; Isaac Allerton, Thomas Hall, Gerrit Wolphertsen van Couwenhoven.

1645—Jacob Stoffelsen, John Underhill, Francis Douty, George Baxter, Richard Smith, Gysbert Opdyck, Jan Evertsen Bout, Oloff Stevensen van Cortlandt.

**The Board of the Nine Men**—Stuyvesant gave prompt indication that he did not favor representative government, at least not government that was representative of the commonalty. He sent the discredited Kieft out of the province with all the honors of a departing governor; and those who headed the people's cause against Kieft he arrested and sent as prisoners to Holland, as has already been stated. But he soon found that the people were getting out of hand. They



would not pay their taxes, discontent was general, and there was indication of further Indian unrest. So, much against his will, he had to heed the advice of his Council, and admit the commonalty again to some share in the government. In agreeing to form a Board of Nine Men, he planned to follow ancient custom in the Low Countries<sup>1</sup>, and give the people very little power indeed<sup>2</sup>. When he issued a placard in the autumn of 1647, ordering a general election in New Amsterdam, Breuckelen, Amersfoort and Pavonia to choose eighteen delegates, from whom the Governor and Council would select nine to constitute a board of people's representatives, the people were optimistic. But when it was seen that they still had no share, that the Nine Men had merely advisory power, that they could not convene except when it pleased the governor, and could not consider any measures but those the governor might put before them, and that after the first year the people would have no voice at all in naming the members of the board, the discontent was evident and ominous. The Nine Men themselves resolved that they would not be manni-

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1. The "Tribunal of Well-Born Men," or of "Men's Men," as it was sometimes called, was one of very ancient date, having been first instituted in the Low Countries, it is supposed, in the year 1295. It originally had separate criminal and civil jurisdiction, the first exercised by thirteen and the second by seven men. These courts were united shortly before the Revolution, the bailiff in each district having been then allowed to administer justice, in both civil and criminal cases, with "Thirteen elected good men." This system, so like the modern jury, continued until the spring of 1614, when the number was altered to "Nine well-born men," who were authorized to administer justice together. (Van Leuwen's Com., 15). These tribunals seem to be a modification of the primitive Witan (Wise Men) who administered justice before the Christian era, among German tribes.—Werner, "N. Y. Civil List," 1888 ed.

2. The powers of the Nine Men were defined by proclamation in September, 1647. They were established in order that the colony, "and principally New Amsterdam, our capital and residence, might continue and increase in good order, justice, police, population, prosperity, and mutual harmony, and be provided with strong fortifications, a church, a school, trading-place, harbor, and similar highly necessary public edifices and improvements"; that "the honor of God and the welfare of our dear Fatherland, to the best advantage of the company, and the prosperity of our good citizens" be promoted; that "the pure Reformed religion, as it is here and



kins, animated only when the governor was so disposed. In 1649 they drafted the famous Remonstrance, which caused such commotion in Holland, and which in 1653 and later brought local government to the municipalities of the province.

The chief function of the Nine Men, according to Stuyvesant's plan, was that which made them virtually an inferior court of the province. Three of their number—a merchant, a burgher and a farmer—were to attend the sessions of the Council each week, for as long as civil cases were before the latter, and act as referees or arbitrators in civil suits. In this way the Nine Men may be deemed to have constituted the first inferior court in the present city of New York. The boards of the Nine Men for the few stormy years of their existences were constituted as follows:

1647—Augustine Heerman, Arnoldus van Hardenburgh, Govert Loockermans, merchants; Jan Jansen Dam, Hendrick Hendricksen Kip, Jacob Wolphertsen van Couwenhoven, burghers; Michael Jansen, Jan Evertsen Bout, Thomas Hall, farmers.

1649—Adriaen van der Donck, president; Augustine Heerman, Arnoldus van Hardenburgh, Govert Loockermans, Oloff Stevensen van Cortlandt, Hendrick Hendricksen Kip, Michael Jansen, Elbert Elbertsen (Stoothof), Jacob Wolphertsen van Couwenhoven.

1650—Oloff Stevensen van Cortlandt, president; Augustine Heerman, Jacob van Couwenhoven, Elbert Elbertsen, Hendrick Hendricksen Kip, Michael Jansen, Thomas Hall, Govert Loockermans, J Evertsen Bout.

1652—David Prevost, William Beeckman, Jacobus van Curler, Allard Anthony, Isaac de Forest, Arent van Hattem, Jochim Pietersen Kuyter, Paulus Leendertsen ven der Grist, Peter Cornelisson, miller.

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in the churches of the Netherlands," be preserved and inculcated. It was only to give advice on such propositions as the Director and Council chose to submit to it. The Board could only meet when called together by the Director and Council, and the Director-General was to preside whenever he thought fit. Six of the Nine Men retired annually, and six new members were appointed by the Director from twelve of "the most notable citizens" to be nominated by the Board.—"New York Civil List," 1888 ed., p. 60.



Commenting on the personalities of those who were prominent in these citizens' bodies, it seems that of those who constituted the first representative body, the Board of the Twelve Select Men, Patroon De Vries was the most prominent. Jan Jansen Dam who, for his part in the Indian fighting, was expelled from the Board of Eight Men, was among the Nine Men in 1647. Jacob Stoffelsen, of the Board of Twelve Men was not chosen by the people for the Board of Eight Men, but was a member of that body in 1645. He signed, by his mark, the treaty of peace concluded with the Indians, "under the blue canopy of Heaven, in the presence of the Council of New Netherland, and the whole community," called together on August 30, 1645, the Council being *Johannis la Montagne*, and the "community" being represented in the treaty by the signatures or marks of the Eight Men. Van Cortlandt signed his name as Oloff Stevensen.

Jan Evertsen Bout was prominent in public affairs. He was one of the first board of citizens, the Twelve Men, became a member of the next board of Eight Men, by virtue of the objection of the board to the election of Jan Jansen Dam, and served later in the boards of Nine Men. He was one of the three members chosen in 1649 to carry the celebrated Remonstrance, the *Vertoogh van Nieuw-Neder-Landt*, to Holland, and plead the cause of the people before the home authorities. He was an old servant of the West India Company before coming, in 1634, to New Netherland. His purpose in coming was, it seems, to take charge of one of the manors of Patroon Michael Paauw, who was Burgomaster of Amsterdam and Lord of Achtenhoven, and who, through Minuit, had secured vast estates in New Netherland, being Patroon of Pavonia (New Jersey, and Staten Island).<sup>3</sup> Bout eventually

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3. Bout seems to have shared responsibility on the estates of Michael Paauw with Cornelis van Vorst. It seems that as late as 1633 the Paauw estates were in charge of the Company. Michael Palusen, or Paulaz, was then in charge. Captain de Vries, in his Journal, records a visit he paid



became a large land owner himself, and lived in the province until his death, in 1670.

Michael Jansen, of the Board of Nine Men, was associated with Bout in New Jersey. He came from Broeckhuysen, Holland, in 1632, settled in Van Rensselaer colony, and traded in furs. He did well, and in 1646 settled at Communipaw, on the west side of the Hudson River. There he seems to have lived until 1655, when the Indians destroyed all the settlements in Pavonia, and did considerable damage on Staten Island. It is said that Michael Jansen's family was the only one left alive of those who had not fled from Communipaw. In 1658 Michael Jansen was a signer of a petition praying for exemption from tithes and other taxes for a few years, so that they might be able to rebuild their homes in the settlement which became Bergen Village. They were granted exemption, and built for defence on the hill now known as Jersey City Heights, probably in 1660. During his residence in New

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to Paulusen in May of that year, as follows: "Coming to the boat on Long Island, night came on, and the tide began to turn, so we rowed to Pavonia. We were there received by Michael Paulaz (Pawn), an officer in the service of the Company." In the same year the West India Company ordered the erection of two houses in Pavonia. One was built at Communipaw, and was afterwards owned by Jan Evertsen Bout; the other was erected at Ahasimus, and was subsequently owned by Cornelis van Vorst. Both were of frame construction, and thatched with flags. Van Vorst, as the "head commander" of the Patroon of Pavonia, entertained Director-General van Twiller in his house in 1636, the house the same evening being burned to the ground. In 1637 or 1638 the Company purchased the Paauw estates, and part of the Pavonia manor (Ahasimus) became known as the West India Company's Farm, and was leased to Bout, who is said to have been, in 1638, "one of the first settlers of that section of New Jersey where the town of Bergen was in later generations established. He was driven from the property by the Indian uprising against Kieft, probably in 1643 or 1644. Bout seems to have acquired the plantation at Gamoenepa (Communipaw) later, and this in 1658 was valued at \$3,200. Later he owned a farm in Gowanus, and died there in 1670. Bout was one of the signers of a deed between the Indians and the Company, whereby the latter acquired, in 1658, the land east of the Hackensack River and Newark Bay, embracing the original township of Bergen, N. J., for "eighty fathom of wampum, twenty fathom of cloth, twelve kettles, six guns, two blankets, one double kettle, and one half-barrel of strong beer," the prior receipt of all of which considerations the Indian chiefs acknowledged.



Amsterdam he had kept a tavern, and later was commissioned as one of the first magistrates of Bergen, which was granted burgher government in 1661. Michael Jansen, it appears, paid Bout 8,000 florins, in 1646, for the farm he occupied at Communipaw. Bout sold adjoining land to Claes Pietersen Cos for 1,444 florins, this sale disposing of all of his Communipaw property, the patent for which it is said came to him by gift.

Pavonia was given good representation in the first popular board for, of the Twelve Men, it had DeVries, Bout, Jansen, Stoffelsen, Planck, Dircksen, and perhaps others. Jacob Stoffelsen was at Ahasimus, on Van Vorst's property, having married Widow Van Vorst. Abraham Isaacsen Planck had an estate at that time at Paulus Hoeck, and had as under-tenants Gerrit Dircksen Blauw and others.

Jochim Pietersen Kuyter, who was of the boards of Twelve Men and Eight Men, was closely associated with Patroon Melyn in forcing reforms. Kuyter was a native of Darmstadt, where he was born about 1597. After some service with the East India Company he transferred to the West India Company, and reached New Netherland, with his family, in 1639. In 1641 he was chosen as one of the Twelve Men, and supported De Vries and the others in expostulating with Kieft, against the Indian policy of the latter. In 1643 they complained to Holland. They were horror-stricken at the barbarities planned by Kieft and carried out by his soldiers upon unsuspecting sleeping Indians, eighty being killed at Pavonia and forty more at Corlaer's Hook, "with horrible barbarities."<sup>4</sup> It brought retaliation in a more terrible mas-

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4. In the middle of the winter of 1642-43, the powerful Mohawks of the north swept down upon the tribes of the lower reaches of the river. Some took refuge with the Dutch opposite New Amsterdam; some at the colony which De Vries had begun by the Tappan Sea. So many came that De Vries was "anxious about the safety of his goods, and paddled a canoe through the broken ice to Manhattan, to ask that a guard be sent to his colony. He found the Director bent on relentless war, and found the





VAN CORTLANDT MANOR HOUSE





sacre of white people in September of the same year; and in the face of this calamity Kieft, who had dismissed the Twelve Men, had to call another citizen body, the Eight Men, of which Melyn was the head and Kuyter was a member. They at once unmasked Kieft by refusing to sit with Jansen Dam, at

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people as emphatically against war. The Twelve Men had been disbanded for some time; but "at a dinner at the house of Jansen Dam, one of the Twelve, he (Dam) and two others, by previous arrangement, presented to the Director a petition purporting to come from the community at large, in which they asked that active hostilities should be begun against the natives." The "defenceless condition of the Indians was urged as an argument for a sudden and merciless onslaught." De Vries dined with Kieft two days later, and urged Kieft not to follow so foolish a course. "Consider, sir," he said, "what good it will do—knowing that we lost our settlements by mere jangling with the Indians at Swaanendael . . . in 1630, when thirty-two of our men were murdered; and now lately, at Staten Island, where my people were murdered, occasioned by your petty contrivances of killing the Indians of Raritan, and mangling the body of their chief for mere bagatelle." But Kieft was not to be dissuaded. And next day, De Vries again protested, as he saw troops gathering. "You will go to break the Indians heads; but it is our nation you are going to murder." Heedless of the advice of De Vries, of Dominie Bogardus and of other men of influence, preparations for war continued, and after sunset on the next day the soldiers under Sergeant Rodolf crossed the river to Pavonia, "in the name of the Commonalty," as Kieft falsely said. They pounced upon the sleeping Indians. "Eighty Indians were killed at Pavonia and forty at Corlaer's Hook that night, with horrible barbarities that might have given the savages themselves a lesson in the art of torture."

"And this was the feat worthy of the heroes of old Rome," wrote De Vries, in bitter allusion to a grandiloquent boast that Kieft had made; "to massacre a parcel of Indians in their sleep, to take the children from the breasts of their mothers, and to butcher them in the presence of their parents and throw their mangled limbs into the fire or water! Other sucklings had been fastened to little boards, and in this position they were cut to pieces! Some were thrown into the river, and when the parents rushed in to save them the soldiers prevented their landing, and let parents and children drown. Children of five and six years old were murdered, and some aged, decrepit men cut to pieces. Those who had escaped these horrors, and found shelter in bushes and reeds, making in the morning their appearance to beg some food or warm themselves, were killed in cold blood, or thrown into the fire or water." "Some," he adds, "came running to them in the country" mangled and mutilated too terribly to be described; "and these miserable wretches, as well as some of our people, did not know but they had been attacked by the Maquas (Mohawks) of Fort Orange." In the morning, the troops returned to Fort Manhattan, with some prisoners and various bloody "tokens" of their "victory." Governor Kieft "welcomed them exultantly, as men who had done a noble deed."—See "Voyages of De Vries," N. Y. Historical Society collections.



whose house Kieft—before embarking on his Indian horrors—had schemed to put the onus of the warfare upon the Twelve Men, by getting Dam and two others to draw up a petition addressed to him and supposedly from the whole board of Twelve Men, demanding war.<sup>5</sup> The Board of the Eight Men did not hesitate to let the States General know of the calamitous consequences of Kieft's vindictiveness<sup>6</sup>, writing also to the College of Nineteen in 1643 and again in stronger terms in the next year, the second communication reaching the College of the Nineteen while they were still seriously discussing the

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5. A terrible retribution was visited upon the Dutch during the summer of 1643, to avenge the cowardly attack of Kieft's soldiers. The Indians of the river tribes banded together, and between March and mid-summer carried the terrors of Indian warfare to all parts of the province, except the Fort Orange region. By September New Amsterdam was crowded with refugees, who were hardly safe even so near to Fort Manhattan. They made the life of the Governor far from pleasant. "The terror-stricken people who crowded with their families within the dilapidated and insufficient ramparts of the fort thronged about him with imprecations and threats." He tried in vain to shift the responsibility to the shoulders of the Twelve Men. "You would not let them meet," he was angrily answered. "How, then, could they have done this?" Even the three who had drafted the pretended petition at Dam's house deserted him. One of them—Adriensen—stalked into Kieft's presence and threatened to take his life if he did not stop his "devilish lies." Indeed one person did attempt it, but was shot down by a sentry as he fired at the Director, and his head was afterwards exposed on a gibbet. Adriensen was arrested and sent to Holland for trial; but the people knew that Kieft was the real author of all their woes.—*Ibid*; also Bryant's "History of U. S."

6. The Eight Men, in the common defence, had to agree to certain war measures against the Indians, but they also thought they should do something to remove the cause of war. "On the twenty-fourth of October, (1643, they addressed to the College of Nineteen at Amsterdam, and on the third of November to the States General themselves, then in session in the Bindehof at the Hague, the first document ever sent from the people of New Netherland to their government at home."

They set forth how "Almighty God had finally, through his righteous judgment, kindled the fire of war" around the "poor inhabitants of New Netherland"; and they graphically described their "woes, their women and children starving, their homes destroyed." To the States General they wrote that the "wretched people must skulk, with wives and little ones that still are left, by and around the fort on the Manhattes, where we are not one hour safe." They prayed for immediate succor. In 1644 they wrote again, and laid the whole blame upon Kieft, and to all intents demanded his recall.



first appeal. As a result Kieft was recalled, Stuyvesant being sent out as Director-General. One of his first acts was to try Melyn and Kuyter for their opposition to Kieft. Kuyter's defence indicates he was a man of education<sup>7</sup>; but Stuyvesant perhaps thought he would undermine his own power as governor if he did not make examples of Melyn and Kuyter. Both were sent, as prisoners, to Holland on the same ship in which Kieft sailed. They who had sacrificed their own interests for that of the commonalty went in disgrace, and he (Kieft) who had so misgoverned the province that during the nine years of his governorship he had accumulated for himself about \$100,000 while the Company was actually bankrupt, departed in triumph, carrying ill-gotten wealth away with him. His unhappy rule had brought death to about sixteen hundred Indians, and much disaster to the Dutch; "there was not a single Dutch settlement, except that at Rensselaerswyck and the military post on the South River, that had not been attacked and generally destroyed; for all of which faithful service Kieft was honored by Stuyvesant<sup>8</sup>,

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7. "Moreover, even just cause does not oblige rulers to undertake war for their subjects, except it can be done without damage to all or a majority of them. For the office of governor extends rather over the whole, than over a part; and where a part is greater there it approximates more closely to the nature of the whole; and in regard to Christ's precept, which wills that we be ready to set aside all contentions and discord; consequently still more does it discountenance war and, therefore, says Ambrose: 'It is not only generosity in a prudent man to desist somewhat from his right; but it is also profitable and advantageous.' In like manner Aristides: 'Men must quietly yield and grant a little, for those are prized who will rather suffer wrong than contention.' Zenophon: 'It becometh even the wise not to commence a war for a great cause.' From all that has been here stated on the subject of war, it can readily be concluded how prudently we must proceed in the matter; and how hazardous it is to engage in it, especially with so rude and barbarous a people as these Indians are."—See "Documents Relative to the Colonial History of the State of New York," Vol. I ("Holland Documents," III), p. 208, quoted in Chester's "Legal and Judicial Hist. of N. Y.," Vol. I, 119.

8. Kuyter and Melyn brought a formal complaint against Kieft, and asked that a rigid inquiry be made into the alleged abuses of his government. The answer was as unexpected as it was unwelcome. Was it to be accepted as his opinion that it was treason to petition against one's magis-



while those who dared to raise their voices against the absolutism of the governorship were discredited; for, as Stuyvesant saw it, they merited only condemnation as rebels. However, though man cannot always properly gauge the significance of events, the guilty do not thereby always go unpunished; there is one above to whom all is clear. Kieft and his booty sank beneath the waves on the homeward voyage, and Melyn and Kuyter were saved<sup>9</sup>. They were honored in

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trates, whether there was cause or not? The denials of Kieft, he (Stuyvesant) considered as of more weight than any evidence his antagonists could bring to substantiate their charges. He would not, Stuyvesant declared, recognize them officially as members of the late Board of Eight Men, nor as representatives of the citizens at large; but only as "private persons." He looked upon them, he said, merely as "perturbators of the public peace," hardly worthy of a hearing. In all this he was mindful of the force of precedent. "If this point be conceded," he said to his Council, "will not these cunning fellows, in order to usurp over us a more unlimited power, claim and assume, in consequence, even greater authority against ourselves and our commission, should it happen that our administration do not quadrate in every respect with their whims?" His despotism was not without forethought. The Council had no will and no opinions of their own; all its members, Van Dincklage, Van Dyck, Keyser, Captain Newton, La Montagne and Van Tienhoven, the Provincial Secretary, hastened to agree with him, and the petition of Kuyter and Melyn was not granted.—See "Stuyvesant's Address, in O'Callaghan's "History of New Netherland," Vol II, 24, 26.

9. It was on this voyage that there came "the observable hand of God," of which Winthrop writes, and which he interpreted as "against the Dutch at New Netherlands," and showing "so much of God in favor of his poor people here (in New England) and displeasure toward such as have opposed and injured them." For Kieft, he adds, "had continually molested the colonies of Hartford and New Haven, and used menacings and protests against them upon all occasions." Wherefore, the hand of God was heavy upon him; so that when the "Princess" approached the English coast she ran upon the coast of Wales, near Swansea, instead of up the English Channel, and was lost. Many saw in it a judgment, who did not agree with the Massachusetts governor that Kieft was "a sober and prudent man," . . . "I told Wilhelm Kieft," De Vries had written four years before, "that I doubted not that vengeance for the innocent blood which he had shed in his murderings would, sooner or later, come on his head." Kuyter and Melyn were disposed to agree with him, no doubt. To Kieft himself, there came deathbed repentance, for as the ship was being pounded to pieces on the Welsh rocks, he called Kuyter and Melyn to his side and said: "Friends, I have been unjust towards you; can you forgive me?" So he perished, and with him eighty others; but among the twenty who were saved were Kuyter and Melyn. Kuyter was washed ashore "in a surf so heavy that it threw at the same time a cannon upon the beach"; Melyn escaped upon a raft.—Bryant's "History of the United States," Vol. II, 120.



Holland, and returned vindicated to New Netherland. And while the persecution of Melyn by Stuyvesant continued until the former was forced to leave the province, Kuyter seems to have so far regained official favor that the governor did not strenuously object to his appointment to the Board of Nine Men in 1652, or as city schout of New Amsterdam in 1654. However, Kuyter was near his end. He was not destined to again take office, for, shortly after being appointed, he was murdered by Indians on his farm near Harlem.

Cornelis Melyn seems to have suffered, by official disfavor, more than any other patroon. He was a man of superior station in life in the homeland, being a wealthy burgher of Antwerp; and he came to New Netherland in 1639 "to see the country," with his friend, Joachim Kuyter, "another gentleman of education and ability." He bought land on Staten Island, and became "its first patroon appointed from Holland." In 1641, he extinguished the Indian title by purchase, but his estate brought him little comfort. "He was twice deprived of his property by colonial governors, and his settlement was twice destroyed by fire and massacre." He had some property in New Amsterdam, on the east side of Broad Street, but this was confiscated by Stuyvesant in 1650. Retreating to Staten Island, Melyn fortified himself upon his manor for a while, but in 1655 another Indian raid razed his buildings. In 1657 he left the province, taking the oath of allegiance to the New Haven Colony, and selling his New Netherland estates to the West India Company. He died in 1674, probably in New York City, leaving a widow and five children, whose descendants are in the families of Conklin, Dickinson, Houston, Kingsbury, Schellinger and others. "He was an upright, clear-headed patriot, of indomitable will and tenacity of purpose. His treatise: 'Wholesome Advice to the United Netherland Provinces,' translated by Dr. H. C. Murphy, Vol. III, 'Historical Collections of New York,' is esteemed by Pro-



fessor Justin Winsor as the production of a statesman and a patriot."<sup>10</sup>

George (Joris Jansen de) Rapalje, (Rapelje) a member of the original Board of Twelve Men, was one of the emigrants who came with Peter Minuit in 1626. His daughter, Sarah, said to be the first white girl born of Dutch parentage on Long Island, married Hans Hansen van Bergen, the first resident shipbuilder on Manhattan Island. Rapelje, about 1637 acquired about 335 acres, near the present Wallabout, and was a pioneer of Breuckelen, where he lived from about 1655, when he became one of its magistrates. His descendants are still of leading Brooklyn families.

Thomas Hall, of the first board of Eight Men (1643), was one of the first two Englishmen to settle within the present bounds of the State of New York. Born in Gloucestershire in 1614, he crossed to New England early and came into conflict with Dutch authority when he attempted to settle on the banks of the Delaware on Dutch land, without their sanction. He was brought to New Amsterdam as a prisoner, but having taken the oath of fidelity to the "high and mighty Lords the States General of the United Belgicq Provinces,"<sup>11</sup> he and his comrade, George Holmes, were permitted to remain in New Amsterdam. In 1639, they were conducting a tobacco plantation, in partnership, on the banks of the East River. In 1654 Thomas Hall owned property just beyond the city

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10. "Nat. Encyc. Am. Biog.," Vol. X, 221.

11. "A Coppie of the Oath of Fidelity to be done and Subscybet by those that are to Come and to Settle under the Government of the Province of the N. Netherlands. "Wee doe in the Presence of the Almighty God hereby acknowledge, declare and sweare that wee shall be true and faithful unto the high and mighty Lords, the States Generals of the United Belgicq Provinces, the Right Honourable, the Lords Bewinthebbers of the West-India Comp., their Governour & Counsel in tyme beinge all fittinge & due obedience accordinge as other Inhabitants of this Province in duty are Bound to doe; that wee shal not acknowledge any other Prince or State to have dominion over us, Soo longe as wee shal live and Continue in this thyre Province and Jurisdiction off the N. Netherlands.

"So help may (or us) the God Almighty."

limits, on the hilltop near what became Beekman Street. He died in 1670.

Another famous Englishman of the Dutch period in New York was John Underhill, about whose activities much has been written in foregoing chapters. He was born in Warwickshire, England, and was a soldier of experience before he came with Winthrop to Massachusetts Bay in 1630. He distinguished himself in the English expedition against the Pequots in 1637. He incurred official displeasure, and was removed from office. Returning to England he published his "Newes From New England." Returning to America, he was appointed governor over Exeter and Dover, in the settlement of New Hampshire. In 1644, when the Dutch governor, Kieft, was in sore straits, and the Indians got beyond control, Underhill took command of an expeditionary force of Dutch and English colonists of New Netherland, for a sudden march through the February snows to the Indian town in Connecticut. With his force of one hundred and fifty colonists, he made a night attack with such vehemence that only eight of the seven hundred Indians escaped. Judged by the standards of our day, it was a massacre; but the victory was so decisive that tension was not so great thereafter in New Amsterdam, and peace came. Of Underhill's somewhat inglorious military manœuvres against the Dutch during Stuyvesant's period as governor enough has already been written. Besides being a member of the Board of Eight in 1645, he was one of the earliest magistrates of Flushing, and at one time was town schout. He was always one of the leaders in the English towns of Long Island. His death took place about 1672, probably at Oyster Bay, Long Island.

George Baxter, who was also a member of the Eight Men in 1645, was another of the capable and troublesome Englishmen of Long Island, an associate of Underhill in most of his enterprises against the Dutch, and probably better acquainted with legal procedure. He was appointed English Provincial



Secretary by Governor Kieft, about 1642, and was continued as such by Stuyvesant. He was prominently connected with the memorable conventions of 1653, and in the next year plotted to free part of Long Island of Dutch rule. He was arrested, and only the complicated state of intercolonial relations at that time saved him from being hanged, it seems. He was one of the first magistrates of Gravesend.

Oloff Stevensen van Cortlandt came to New Amsterdam in 1638 with Director Kieft, in the service of the West India Company as a commissary. He remained in commercial capacity with the Company for ten years, after which he became a brewer, and in time a man of wealth and prominence. He was of the Board of Eight Men in 1645, succeeded Van der Donck as president of the Board of Nine Men in 1650, signed the celebrated "Vertoogh" in 1649,<sup>12</sup> and in 1655 was one of the burgomasters of New Amsterdam, to which office he was reelected in 1656, 1658, 1659, 1661, 1662, 1663, being in office up to the time when the government passed to the English, in 1664. He was one of the commissioners appointed to arrange the terms of capitulation. At one time he was a colonel of militia in New Netherland. He died in New York City April 4, 1684.

Augustine Heermans, member of the Board of Nine Men in 1647, was born in Prague, Bohemia, and came to New Amsterdam in 1633. For some years he continued in the employ of the Company, but when the opportune moment arrived, entered into commercial business for himself, apparently in New Amsterdam. He did well, and in 1644, after at least one voyage to Holland, represented the great Amsterdam mercantile house of Gabry in New Amsterdam. He was

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12. Van Tienhoven, in attempting a defence of the acts of Stuyvesant by insinuations against those who signed the Remonstrance, said of Van Cortlandt, that he had "profited in the service of the Company, and endeavored to give his benefactor the world's pay, that is, to recompense good with evil."

one of the three merchants of New Netherland chosen by Stuyvesant in 1647 to join the Board of Nine Men. He was of that board in 1649 and 1650, but because he had been a party to the "Vertoogh," drafted in 1649, was not favored by Stuyvesant for the board of 1652. Maybe his failure in business in that year is another reason why. But within a year he had compounded with his creditors, and had reestablished his credit and repute. Possibly the privateering frigate "La Garce," of which he was part owner in 1649, was a losing venture, seeing that the ending of the Thirty Years' War in that year ended the opportunities to prey upon Spanish commerce along the Main. He was of service to New Netherland as a diplomat, going to Rhode Island as an ambassador in 1652 and to Maryland in 1659. In 1660 he acquired an estate in Maryland, but seems to have made New Amsterdam his chief place of residence and business until after 1664. He could not adapt himself to English conditions in the Dutch city, and so removed to Maryland, where upon his vast estate, Bohemia Manor, of 18,000 acres, he lived for the remainder of his life, death coming in 1686.

Arnoldus van Hardenburgh, the second of the merchants to be placed upon the original Board of Nine Men, became a wealthy man by his trading and in merchandizing. He was also a member of the Nine Men of 1649, and signed the famous "Vertoogh," which eventually brought burgher government to the communities of the province.

Govert Loockermans, the third merchant to be elected to the Board of Nine Men in 1647, was an old servant of the West India Company, in whose employ he was when he came to New Amsterdam in 1633, with Governor Wouter van Twiller. Van Tienhoven described him as at first, "a cook's mate." But he soon became an independent trader, and in 1640 returned to Holland to be married. From 1641 until the year of his death he was a shipping merchant and general trader in New Netherland, becoming one of its wealthiest



citizens. His yacht "Hope" added to his trading radius. He also did considerable trading with Holland. In addition he was a brewer. His life was an adventurous one, and some of his experiences he regretted; for instance, his part in the Corlaer's Hoeck massacre in 1643. In his trading with the Indians he had gained a knowledge of their language, and on several occasions was called upon to act as interpreter. His signature appears on the treaty signed by Stuyvesant and others with the chiefs of the Esopus Indians in 1664. Loockermans is described as "old Schepens," and also as interpreter. He was a member of the Schepens Court in 1657 and 1660, and was orphan master in 1663. In 1670 he was lieutenant of a militia company.

Hendrick Hendricksen Kip was one of the burgher members of the boards of Nine Men in 1647, 1649 and 1650. He came to New Amsterdam before 1643 and seems to have been of good family.<sup>13</sup> He became a capable man of politics, a leader in the popular movement which eventually brought burgher government.<sup>14</sup> He was a man of strong convictions which he fearlessly followed. He became a member of the Schepens Court of New Amsterdam in 1656.

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13. It is believed that he was of noble lineage, probably from the family of De Kype, of Bretagne, France, members of which removed to Holland in the sixteenth century as the result of religious agitation in their native country; the coat-of-arms which he claimed was on the stained glass windows of the first church built in New Amsterdam, and on the Kip's Bay house of his descendants.—Chester's "Legal and Judicial Hist. of N. Y.," Vol. I, 118.

14. In the popular struggle against Director Kieft he was one of the leaders, and as influential as any in the community. His strong personality and his unwearying activity made him one of the most remarkable individuals of his time and place. His hatred of Kieft for the massacre of the Indians at Pavonia and Corlaer's Hook in 1643 never waned, and he never neglected an opportunity to show it. In August, 1645, when peace was being arranged with the Indians after the Kieft Indian wars, the people were called to the fort to hear and consider the proposals for the treaty between the savages and the Dutch. The record has it that all assented to this summons "except Hendrick Kip, the tailor." When Kieft sailed from New Amsterdam for Holland he, almost alone of the community, would not even join in the adieus which the people paid as a matter of form to the deposed ruler.—*Ibid.*, same page.

Jacob Wolphertsen van Couwenhoven, another of the burgher members of the first Board of Nine Men (1647), came to the province in 1633, with one or more of his brothers. They were traders, and, like most traders, developed the general commercial lines of New Amsterdam merchants. Pieter was in partnership with his brother Jacob in several lines, milling and brewing being added to their enterprises. They became wealthy, and were respected, this being evidenced by their part in public affairs. Gerrit Wolphertsen van Couwenhoven was a member of the first Board of Eight Men (1643), Jacob was of the Nine Men of 1647, 1649 and 1650, passing out of official grace and office thereafter because of his association with the "Vertoogh" against Stuyvesant. Jacob Van Couwenhoven was one of the three who took this Remonstrance to Holland. Pieter was one of the first magistrates of New Amsterdam, being a member of the Schepens Court created in 1653. With this municipal body he was connected in 1654, 1658, 1659, 1661 and 1663. He was a delegate from New Amsterdam to the Convention of 1653, and was one of those who signed the treaty of peace in May, 1664, with the Esopus Indians. In that document he is described as "Lieutenant," which was the capacity in which he served under "Captain-Lieutenant" Marten Cregier, in the Esopus campaign. The change from Dutch to English sovereignty in 1664 affected his business, and the last years of his life were spent upon his farm in New Jersey.

Adriaen Cornelissen van der Donck, to whom has been accorded, somewhat erroneously, the distinction of being "the earliest lawyer in New York," was born of good family in Breda, North Brabant, about 1620.<sup>14a</sup> His father was Cornelis van der Donck, a prosperous burgher of Breda. His grandfather was Adriaen van der Berg, who thirty years be-

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<sup>14a.</sup> The "National Cyclopedia of American Biography" (Vol. XII, p. 205) states that he was born "about the end of the 16th century."



fore had conceived the plan by which the Castle of Breda was captured from the Spaniards, his vessel with its cargo of turfs, screening seventy intrepid soldiers, getting within the castle precincts unsuspected, whence after dark the soldiers emerged and surprised the garrison, the turf boat thus playing a part in the Dutch war of independence somewhat like that of the wooden horse in the siege of Troy. Adriaen van der Donck, in his New Netherland experiences, showed resourcefulness and tenacity of purpose equally commendable if not so colorful as that of his doughty grandfather.

At the time that Adriaen first began to think of the North American province of the United Netherlands he was a student at the University of Leyden, a young man of about twenty years, "almost finishing his studies of the civil and canon law." He heard of the far-away colony of Rensselaerswyck on the Hudson River; and adventure in the wilds of America, fur trapping and trading, and encounters with the Red Indians perhaps, were more alluring than the young man could resist. He went to see Patroon Kiliaen van Rensselaer in Amsterdam. This keen man of affairs quickly saw that the young student would be of use to him. Writing to one of his partners, he stated: "This young man of proper habits is in truth a good thing for us. I have made him some proposals." Van der Donck had not yet been admitted to practice law in Holland, but his study of law in the university was sufficient for the purpose of the patroon, who, in truth, stood much in need of a *voorspraecke*, or attorney, to defend his interests in the colony, and a man of law to guide judicial procedure in the patroon court at Rensselaerswyck. So he offered Van der Donck satisfactory terms to become *schout-fiscal*. He was commissioned as officer of justice of the colony of Rensselaerswyck on May 13, 1641, to succeed Jacob Planck, who had been "officier" from 1634-37, but who had not been reappointed. Planck had also been *commies* or commissary, as well as *schout*, but in the former office had not given satis-

faction,<sup>14b</sup> and Arendt van Curler, his assistant, had become *commies*, continuing as such, it seems, after van der Donck assumed the judicial responsibilities.

Van der Donck reached Rensselaerswyck in August, 1641, and leased half of Castle Island for a farm and dwelling place. He was evidently disappointed that he had not been given full charge of the colony, and friction soon developed between Van Curler and himself. Complaints reached Van Rensselaer from Van Curler; and these seemed of such seriousness that the patroon went to infinite pains to draft for van der Donck a treatise on his duties. This paper, it is said, took Van Rensselaer "the better part of four days to compose." He blamed van der Donck "for being too hot-headed; for arguing with fractious colonists instead of maintaining his dignity by summoning them before the court of justice." He accused him of overweening ambition. "I tell you roundly," he wrote, "if you set your mark so high, you will study more your own advancement than my advantage."

Soon Van Rensselaer was shocked to realize that the ambition of his *schout* reached even to the height of a patroonship. By threats of dismissal and imprisonment, van der Donck was forced to give up his plan to interest some capitalist to plant a colony in the valley of the Catskill, just south of the van Rensselaer boundaries; but his position at Rensselaerswyck was fast becoming untenable. Commissary Van Curler, in the spring of 1643, issued orders that no one should go into the forest to trade with the Indians; that Indians must bring their furs to the colony, and first offer them to

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14b. Patroon van Rensselaer wrote to Director-General Kieft in 1639: "I am negotiating about sending some people of capacity to my colony, but they were not able to make up their minds so quickly as to get ready, and in the former officer, Jacob Planck, I do not find a proper manager. He knows more about trading furs, which have been of greater profit to him than to me; however, I wish to part with him in friendship, and not to give the least occasion for dissatisfaction among my people, for they stir one another up."—See the "Minutes of the Court of Rensselaerswyck, 1648-1652." (Van Laer, 1922), p. 10.



the officials. Furthermore, the colonists were forbidden to buy goods from any of the itinerant merchants who came up the Hudson with their yachts; all settlers must buy only from the patroon's agents. Van der Donck flatly refused to enforce these unpopular laws; and once, when he was ordered to search the houses of the settlers for woolen cloth, supposed to have been smuggled from a trading vessel, he "went about passing 'Good day,' and giving the people the wink, and reported 'nothing found.'"

The first patroon died in 1644 (or shortly before); but this happening did not make much change at Rensselaerswyck. Van Curler was still commissary, and van der Donck was still non-compliant. His opportunity, however, came in 1645. In July of that year Governor Kieft came up the river to negotiate a treaty of peace with the Mohawk Indians. Van der Donck acted as mediator, and also advanced some money that the governor needed, with which to make presents of wampum to the Indian chiefs. In this way the young schout of Rensselaerswyck came favorably before the governor; and probably it was at this time that Kieft promised to grant van der Donck a substantial tract of land. They went down to Manhattan together. There van der Donck met and married an English woman, Maria, the daughter of Rev. Francis Doughty, who had taken refuge in New Netherland, having been driven from his pulpit at Cohasset, Massachusetts, for daring to declare that Abraham's children ought to have been baptized. In the fall of 1645 Van der Donck returned to Rensselaerswyck with his wife. But his house on Castle Island was burned down in mid-winter and he and Van Curler quarrelled over a point of law, Van Curler contending that the lessee (Van der Donck) and not the lessor (Van Rensselaer) should stand the loss of the house. This quarrel reached its height in the spring of 1646, after Van der Donck had sold his interest in the leased farm,<sup>14c</sup> and had

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<sup>14c</sup>. "Ibidus," p. 78.

decided to give up his Rensselaerswyck office. Some time after the opening of navigation in 1646, Van der Donck and his wife went down to Manhattan. He seems to have still held an interest in the Castle Island farm, however, for as late as 1649 two hundred schepels of wheat belonging to him were attached by the commissary at Rensselaerswyck, to make good the loss of a horse belonging to the patroon which had been drowned on Van der Donck's farm. Still, Van der Donck became a patroon himself in 1646, for in that year he was given patent of some fine lands of Westchester County, along the Hudson River. He named the patroonship *Colondonck*, signifying Donck's colony. His land extended from Spuyten Duyvil Creek to beyond Yonkers, the latter place, it is said, deriving its name from the courtesy title "Jonkheer," by which the young lord of Colondonck was known to the settlers in the colony or vicinity. His possession came to be known as "De Jonker's Lant," and later as Yonkers.

For nearly three years after leaving Rensselaerswyck, Van der Donck pursued matters relating to the colonization of his manor, and also of trade in Manhattan. In New Amsterdam he rubbed shoulders with the leading citizens, and eventually came into his logical place, at the head of the movement for popular government. He associated with Cornelis Melyn, who had so resolutely resisted Governor Kieft in the interests of the commonalty; and after Melyn had been banished by Stuyvesant, the leadership of the citizen's body seemed to logically rest with Van der Donck. He was not the president of the first Board of Nine Men called by Stuyvesant in 1647, but headed the board in 1649, a vital year; and he is deemed to have been the author of the celebrated "Vertoogh" (Remonstrance) which he and two other members of the Board of Nine Men took to Holland. The struggle between absolutism and popular government has been reviewed in earlier chapters. Suffice it here to state that Van der Donck, for his part in the preparation of the Remon-



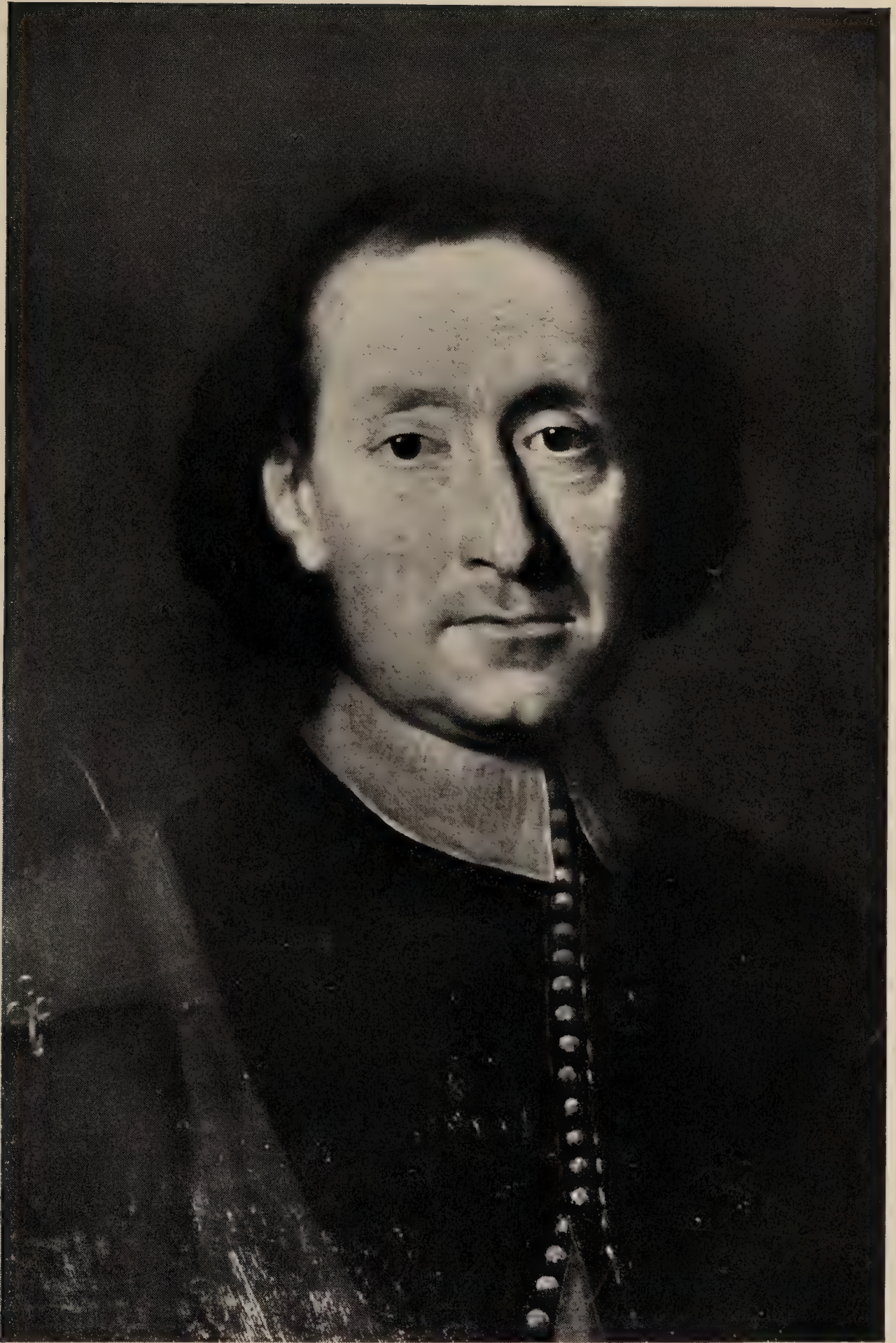
strance, was expelled from the board by the governor, arrested, and held in jail for some time. His incarceration would probably have continued had not Melyn returned to New Amsterdam vindicated by the States General, that body having reversed the sentence of banishment imposed by Stuyvesant, and having delivered to Melyn an order commanding Stuyvesant to appear before them, in person or by his accredited attorney, to answer the charges brought against him.

Thus rebuked by the highest court of Holland, Stuyvesant dared not, just then at least, risk a further reprimand, which might have come had the States General become aware of his treatment of Van der Donck. So the latter was released.

Van der Donck's ardor for the common cause had not weakened in confinement. In fact, he had scarcely been released before he began to draft another petition, more emphatic. It was signed by eleven men on July 20, 1649, the signers, present and past members of the Board of Nine Men, "in the name and on behalf of the commonalty of New Netherland," demanding burgher government, and condemning government by the West India Company. Stuyvesant did not attempt to stay the sailing of Van der Donck and two others with this petition, and the longer "Vertoogh."

But the struggle in Holland was destined to be long drawn out and bitter, the controversy being remarkable for the pertinacity of Van der Donck and the high-handed actions of the West India Company, who seemed to flout even the States General at one time. The delay, as well as the independent attitude of the Company, arose from the fluctuating course of European politics. Twice when victory seemed to rest with Van der Donck and his associates, some mischance drove it away. In January, 1649, Charles I, of England, had been beheaded, and sympathy in the Netherlands—at least among the ruling class—had rested with the Stuarts to such an alarming extent that, try as the States General would and





ADRIAEN van der DONCK, 1618-1655

(Painted in 1654 by Jacobus Gerritsen Strycker, who died in 1687)  
(Copyright photo by courtesy of Thomas B. Clarke)





did to prevent it, the Netherlands seemed to be ominously verging towards war with England. Hence, all other matters of government were relatively unimportant. Van der Donck appeared before the States General in October, 1649, and favorably impressed that body. The case was referred to a committee; and in due course the committee reported. They favored reforms, recommended that Stuyvesant be recalled, and also that burgher government be established in New Amsterdam. But the West India Company chose to disregard the report, though it was adopted by the States General. "They mustered enough influence so that no measures were taken against them." So Van der Donck had to begin the fight anew.

He approached the problem from a new angle. He published the Remonstrance, thereby bringing the popular party of Holland to his support. So much so that the West India Company in one letter to their governor, Stuyvesant, stated: "The name of New Netherland was scarcely ever mentioned before, and now it would seem as if heaven and earth were interested in it." Van Tienhoven, the attorney for Stuyvesant, had come to Holland and had not helped the cause of the West India Company by an attempt he made to cast aspersions upon the characters of the remonstrants. He was ordered to appear before the States General. This seemed dangerous, and so the West India Company connived to hurry Van Tienhoven back to New Netherland. A stern reprimand from the States General came upon the heads of the West India directors, who were playing a dangerous game. It became evident in time that the Company might lose its charter altogether if they continued so to run counter to the recommendations of the States General. So, finally, the West India Company thought it better to compromise, by conceding burgher government to New Amsterdam. In the spring of 1652 the Company acknowledged defeat by sending orders to



Stuyvesant to bring such a system of local government into effect. Van der Donck had won. And after a short time he won an even greater victory, the States General intrusting to him an order recalling Stuyvesant to Holland, to give an account of his administration.

Van der Donck at once prepared to depart for New Netherland. "He embarked his wife and other relatives and some colonists for his manor of *Colondonck* on a ship of the West India Company, and was about to join them. The Company determined to save Stuyvesant, refused to permit him to go on their ship. He was forced to see his party sail away without him."<sup>14d</sup> And soon it seemed that his victory was an empty one. War broke out between England and Holland. It so affected the New Netherland situation that Van der Donck was asked to give up the summons he had hoped to deliver to Stuyvesant. Though possibly an arrogant governor, it was recognized that Stuyvesant was a soldier of experience, and that his recall at such a time of war could not be risked. Possibly, this great change in the political situation now worked in Van der Donck's favor. Certainly Stuyvesant had nought to fear from him now. At all events the directors of the West India Company relented so far as to permit Van der Donck to return to the colony, and seemed to be not disinclined to permit him to practice as an advocate in New Amsterdam. It seems that during his long stay in Holland Van der Donck had enrolled once more at the University of Leyden, had taken the degree of Doctor of Civil and Canon Law, and had been admitted to practice at the Bar of the High Court of Holland. It is recorded that Van der Donck was forbidden to practice law when he returned to New Amsterdam, but the letter from the West India Company to

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<sup>14d</sup>. Alfred L. Becker, in a paper entitled "Mr. Adriaen van der Donck, the Earliest Lawyer in New York," read before the New York State Bar Association at Albany, Jan. 20, 1904.—See "Albany Law Journal," Vol LXVI, p. 46.

Stuyvesant, under date of July 24, 1653, does not seem to indicate that such was the wish of the Company.<sup>15</sup> Still, the vindictive Stuyvesant was given power to decide the question; and he was so unforgiving that Van der Donck at last had to appeal to the newly-formed city government for the protection of his rights as a citizen. Even the directors rebuked Stuyvesant for "suspecting Van der Donck so vehemently."

Van der Donck, it seems, wanted to examine the records of the province so as to make his literary work, the "Description of New Netherland," more authoritative. Stuyvesant perhaps suspected that Van der Donck in this was actuated more by political motives than by literary. At all events, his work—which was published in 1655 and ran through two editions, stirring up much interest among Hollanders—had to be completed from unofficial records. And in the year of its publication, 1655, Van der Donck died—at the age of thirty-five years. In September of that year his colony, Colondonck, was blotted out by raiding Indians.<sup>15a</sup> The estate, however, remained in the possession of his family until 1672.<sup>15b</sup>

Whether Van der Donck practiced as a lawyer after returning to New Netherland is not important—in considering the claim made that he was the first lawyer to practice in

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15. "Whereas, Master Adrian van der Donck has presented to our Board two petitions, namely: that having received his degree at law by the University of Leyden, and been admitted to the bar by the Court of Holland, He may be permitted to practice as Attorney and Counsellor in New Netherland, and further to be allowed to examine the documents and papers in the Secretary's office there to complete his already begun Description of New Netherland: we have resolved on the first to allow that according to the usages of this country he may practice there as advocate by assisting every one who desires it with his advice, but as to pleading in court, we cannot observe that at present it is proper to allow because we do not know whether there is somebody there of sufficient ability and the necessary qualifications who, before being admitted to practice there, must report to you (or as the case may be to us) to act and plead against the said Van der Donck."

15a. "History of Westchester County" (1925), p. 124.

15b. "National Encyclopedia of American Biography," Vol. XII, p. 205.



New York. In challenging this claim it is asserted that he did not practice at all. But though he may not have practiced in New Amsterdam, he did practice earlier in Rensselaerswyck. As *schout-fiscal* he was prosecuting attorney; and he acted as referee in a Rensselaerswyck case in 1649. He was evidently in Rensselaerswyck in 1654, for his name is mentioned in a Fort Orange court record of that year. However, he was not the first lawyer connected with the courts of New Netherland. Lubertus van Dincklagen, "a man of superior education, a doctor of laws, and an able and accomplished jurist," was in the province, in legal capacity, some years before Van der Donck became *schout-fiscal* of Rensselaerswyck colony; Van Dincklagen was *schout-fiscal* of New Netherland during the administration of Van Twiller, 1633-38.

But a greater distinction than that of being the first lawyer in New York may be accorded to Dr. Adriaen van der Donck. One does not have to be illogical to claim that he was the "father" of what is now the largest or next to the largest city in the world. Van der Donck in his great struggle, followed through ably and persistently even against his own interests, won for the people of New York, or New Amsterdam, as it then was, a municipal charter. For the first time since its settlement, the community on Manhattan Island was permitted to manage its own affairs. The man who made this possible, who carried the fight almost alone against a trading corporation that was almost as powerful as the Dutch Government itself, and who defeated this great political power on its own ground, surely deserves a prominent place in the municipal history of New York City, as well as in the legal and constitutional history of the State of New York.

David Prevoost, whose name comes first—as though succeeding Van der Donck, as president—among the Nine Men of 1652, was schoolmaster in New Amsterdam at that time.

He had been in New Netherland almost from the beginning of settlement. He was only sixteen years old when he first came, in 1624; but perhaps he did not then come to settle. We find that in 1634, he reached New Amsterdam again, bringing a wealthy wife; and the remainder of his life (twenty-three years) was spent in the province. He was in the service of the Company, as commissary, and was able to secure large grants of land. Also at one time he did profitable business as a general trader. He showed patriotism and common sense in his handling of the Connecticut situation in 1642, and while at Fort Good Hope the English found him "a veritable thorn in their flesh." In 1647 he returned to New Amsterdam and became the schoolmaster of the town. He also busied himself with public matters. In 1652 he was made a notary, "a position which was then one of grave importance and exceedingly profitable to its holder." Only one other notary had the province had up to that time, Dirck van Schelluyne, who had been commissioned in 1650,<sup>16</sup> and who was at that time in official disgrace.<sup>17</sup> In practice, if not by commission, the notaries were attorneys and more than ordinarily acquainted with the law.<sup>18</sup> Prevoost is stated to have

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16. "In addition to these (magistrates who were well versed in the law) there were several notaries. Dirk van Schellyne, who came out in 1641, had previously practiced at the Hague; David Prevoost discharged the duties of notary for some years before Schellyne's arrival; and there was another notary named Matthias de Vos."—Chief Justice Daly, in "State of Jurisprudence During the Dutch Period, 1623-74," "History of Bench and Bar of New York," Vol. I, 21.

17. Early in the administration of Stuyvesant, the independent character of Van Schelluyne brought him into trouble. He entered a protest against Stuyvesant, saying that he "dared not prepare any more writings, but commended matters to God." From the records he appears to have been an experienced and skilful practitioner. He was appointed Court Marshal or High Bailiff to levy executions and enforce processes, and after his complaint to the States General that body sent positive orders to Stuyvesant to allow him to discharge the functions of his profession without interference.—Chester's "Legal and Judicial History of New York," Vol. I, 142.

18. Under the civil law, as it prevailed in Holland, a considerable part of the proceedings in a cause were conducted by the notary, who was re-



been "an attorney and counsellor" as well as a notary; and as his practice was in the period prior to 1658, when Stuyvesant established a regular tariff of fees for legal service, the emoluments of notarial service were more substantial than in later years.<sup>19</sup> In the same year that Prevoost was appointed notary he was also elected to head the new Board of Nine Men. The sessions of that body were held in the schoolroom; hence it would seem that Prevoost also retained his school appointment. In 1653 he was appointed, with two others, Johannes la Montagne and Govert Loockermans, to meet the New England commissioners and persuade them that the Dutch were not intriguing with the Indians to massacre the

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quired at least to be well versed in the manner of carrying on legal controversies; and as he was frequently consulted by suitors for advice as to their rights and liabilities, he was generally well informed and capable of giving it. Such was the case with Van Schellyne, who, from the records he has left, was evidently an experienced and skilful practitioner.—Daly, in *State of Jurisprudence During the Dutch Period*, Vol. I, 21, "History of Bench and Bar of N. Y."

19. During Stuyvesant's administration, several complaints were made to him that the notaries were overcharging; and as the work was almost as comprehensive in law as that of an attorney of to-day, the scale of fees set by the Director-General as fair remuneration for the legal or notarial service was the first provision made by law in New York to regulate the fees that an attorney or court officer might charge. From the complaints made of extortion by lawyers in New Netherland prior to 1658 the following exhibit is made:

For a petition a notary would charge up to 14 guilders.

For a written conclusion up to 12 guilders.

For a replication up to 12 guilders.

For a deduction up to 12 guilders.

For Inventory of Documents up to 12 guilders.

but according to the scale of charges set by Stuyvesant the fees for such service should have been 3, 3, 2, 6 and 3 guilders respectively.

This tariff was established by proclamation on January 25, 1658, a copy of Stuyvesant's ordinance recorded in the "New York Records of Burgomasters and Schepens" reading as follows:

"Whereas, the Director-General and Council of N. Netherland have sufficient evidence by their own experience, in certain bills of costs exhibited before them, as remonstrances and complaints of others presented to them, of the exactions by some Scriveners, Notaries, Clerks, and other licensed persons in demanding and collecting excessively large fees, and money, for writing, from contending persons, almost all sorts of instruments to the manifest, yea, insufferable expense of judgments and judicial costs, some led by covetousness and avarice so far that they are shamed to make a



English. In 1655 Prevoost was appointed schout of the district court then created to serve the municipalities of Brueckelen, Midwout (Flatbush) and Amersfoort (Flatlands), at a salary of two hundred guilders a year, with court fees. Two years later he died. David Prevoost was evidently one of the better class of public officials, well educated, and able to give genuine service for public pay. It is said that he spoke Dutch, French, English and Latin and several Indian languages.

Prevoost was succeeded as schout of the District Court of the three Dutch towns by Pieter Tonneman, who became

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bill of or specify the fees demanded, but ask if not extort it from parties in gross. Therefore, the Director-General and Council, wishing to provide for the better and more easy administration of justice, hereby ordain, enact, and command:

“That no person shall henceforward presume to draw up or write any public instrument, unless he be qualified or licensed thereunto, as Secretary, Notary or Clerk by the Director-General and Council, which qualified or licensed person shall be bound to be satisfied with such fees as are fixed by the Director-General and Council therefor and renew every year on the 5th of February the established oath to submit themselves unconditionally to the Ordinances enacted or to be, according as occasion requires, enacted, regarding Secretaries, Notaries and Clerks and such like offices, and to obey them in manner as follows:

“Firstly, all Secretaries, Notaries, and Clerks, or such officials shall keep a regular Record or Journal, in which, if necessary or required, can immediately be seen what is transacted before them, and for what they make a demand of such fees and render an account.

“Secondly, No Secretary, Notary, Clerk, or such like official shall ask money in hand from any person, or receive any presents, nor compound nor agree with any one about fees or engrossing money to be earned, as such compounding or previous bargaining before final judgment may prove detrimental to the losing party in case he be condemned in the costs and mises of justice; but the aforesaid officials or such shall have themselves paid for the executed instrument according to this Ordinance, or at the termination of the suit, by rendering a pertinent bill or specification of what they have written, drawn out, or copied without entering in such bill or specification in gross any extra costs, and all this according to the fees fixed therefor, without demanding or exacting from their principals anything else or more, under penalty of their office and fifty guilders fine on those who shall be found acting contrary thereunto.

“Thirdly, the Secretary, Notary, Clerk, or official shall sign with his own hand, and when required seal with his signet all instruments executed before him on condition of receiving six stivers for his seal, in addition to his established fee.



city schout of New Amsterdam in 1660. Tonneman was city schout in 1660, 1661, 1663, 1664, when Dutch rule ended. And, when the Dutch came again in 1673, he was able to again get appointment as schout of a Long Island court. In fact, Tonneman, who was an old servant of the West India Company, had held many public offices. He was a member of the Director's Council in 1657, 1658, 1659.

William Beeckman, of the Board of Nine Men of 1652, was one of the most capable public servants. Originally he was of the official family, coming to New Netherland with

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"Fourthly, the Secretaries, Notaries, Clerks and similar officials are bound, when required, to give acquittance or receipts for the earned and paid fee, that the same may be used as needs be.

"Finally, and lastly, all Secretaries, Notaries and Clerks shall be bound to serve the poor and indigent who demand it as an alms, Gratis and for God's sake; and may ask and take from the wealthy the following fees:

"For a plain petition, written on one side of the paper, 18 stivers; and if the petitioner will have it booked or registered for the copy, 12 stovers.

"For a plain demand as above, 18 stivers.

"For an answer, reply, or rejoinder engrossing, two guilders; copying, 24 stivers; but should the answer, reply, rejoinder, demand, or petition require more writing than one half sheet of paper, for each page of 25 to 39 lines, with each line of 30 to 36 letters, 30 stovers.

"For a deduction; for each page of 26 to 30 lines with 30 to 36 letters in a line, 2 guilders.

"For a petition in appeal to be presented to the Director-General and Council, two guilders ten stivers.

"For a petition or revision, reformation, reduction, rehearing, purging, complaint, pardon, or grant of land to be presented to the Director-General and Council two guilders 10 stivers; if it exceed the second or third page, 24 stivers per page, lines and letters as above.

"For a petition as before, to some Inferior Court, 40 stivers or 20 stivers per page, lines and letters as above.

"For a judgment, 30 stivers.

"For extracts from their books, 20 stivers per page lines and letters as above.

"For a contract, obligation, assignment, declaration, Case or deed, 30 stivers; for a copy, 20 stivers.

"For a verbal consultation, the matter being to be brought before the Director-General and Council, 20 stivers, on condition the Notary is bound to enter the time and matter thereon, in his journal.

"For an inventory of documents to be delivered by parties, 15 stivers.

"For drawing up an interrogatory and entering the queries, 10 stivers per page; provided 7 to 8 interrogatories are on one page; for entering the answers on the opposite side also, 10 stivers.

"For a day's journey with or without their principals, when required,



Director-General Stuyvesant in 1647, as a clerk. But when put into public office he showed that he felt he was responsible first to the people. He did not hesitate to state his own opinion, whether pleasing or not to his superiors.<sup>20</sup> Beeckman was broad minded, capable, sincere, and by tactfulness was able to hold the confidence of the English, when they took up the reins of government, as well as of the hot-headed Stuyvesant. Beeckman was a burgomaster of New Amsterdam for nine years, though only for one year under the Dutch (1674). However, he was a magistrate (schepens) of the first court established in New Amsterdam, that of 1653, also serving as such in 1656 and 1657. He was then called upon to endeavor to reorganize the affairs of the colony of New Amstel, which had been part of New Sweden and had suffered much through sickness and loss of crops under the first governor, Jacob Alricks. Beeckman went in the capacity

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four guilders, in addition to conveyance and board; but going with their principals when requested, within the City, village or place, 20 stivers.

"For one attendance at Court, in the absence of, or with, their principals, 15 stivers, neglecting it they shall repair the defaults and damage thereof.

"No drinking treats, nor any other extraordinary presents, gifts or *douceurs* shall be entered in any bill, nor demanded nor asked by the Secretaries, Notaries, Clerks, or similar officials; and these preceding articles shall be published, affixed, and observed not only within all places within this Netherland Province where men are accustomed to make publication, but shall be privately read by the Fiscal, Schout and other subaltern Magistrates to the Secretaries, Notaries, Clerks and such like, both now and on the 5th of February of every year, not being Sunday, in their respective Boards, and take an oath from them, that they will strictly regulate themselves accordingly, and in case of refusal deprive them of their office and place, expressly forbidding them directly or indirectly to write any instruments for any person, under a penalty of fifty guilders for the first, twice as much for the second time, and for the third offence to be arbitrarily punished at the discretion of the Judge. Thus done at the Assembly of the Hon. Director-General and Council, holden in Fort Amsterdam in N. Netherland the 25th January A. D. 1658."—"Records of Burg.—Schepens of New Amsterdam," Vol. II, 316.

20. In the autumn of 1653 the outlying settlements sent delegates to a conference which considered what measures should be taken to guard their homes against Indian attack. There were other reasons, the whole bound in the chafing of the commonalty under the despotic rule of the Director-General. The first representative assembly held in New York developed



of Vice-Director, but eventually returned, with those who remained of the colonists to New Amsterdam, this ending Dutch occupation of the Delaware region. Under English rule he was sent to the Esopus country as schout, or sheriff, returning to New Orange in 1673. In the next year, after the Dutch had returned and retaken New Amsterdam, he became burgomaster. Nevertheless, he was esteemed by the British, and was not barred from office thereafter. He was mayor of New York under the British, and alderman in 1686. He died in 1707, aged eighty-four years. Ten years after his death his valuable New York City land<sup>21</sup> was divided into city lots and so sold. William Beeckman was "one of the most faithful magistrates of the city." He also was a large land owner outside New York, having acquired the Corlaer's Hook estate of Jacob van Corlaer.

Jacobus van Curler (Corlaer) was of a family that was prominent in the affairs of New Netherland. He was a com-

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out of that first meeting, at which they resolved to meet in December, whether the Governor sanction the gathering or did not; and that if Stuyvesant would not remedy their condition, they would carry their grievance direct to the States General. Stuyvesant forbade them to meet, after reading an offensive, "treasonable" petition that set forth six grievances, resulting from his maladministration, that called for "categorical answer" from him.

William Beeckman was deputed to deliver this Remonstrance into the hands of Stuyvesant. He sat calmly in the presence of the Governor as he raved. Lossing writes:

"The Convention was not to be silenced by bluster or threats. They told the governor by the mouth of Beeckman . . . that if he refused to consider the several points of the remonstrance, they would appeal to the States General. At this threat the governor took fire, and, seizing his cane, ordered Beeckman to leave his presence. The plucky ambassador folded his arms and silently defied the magistrate. When Stuyvesant's wrath had subsided, he politely begged the representative to excuse his sudden ebullition of passion and receive assurances of his personal regard."—Lossing's "History of the United States," Book III, Chap. 15.

21. He received a patent of land beyond the fresh water, or Collect, pond, June 20, 1655, and built a fine residence where Beekman and Cliff streets intersect, and where St. George's Chapel was afterward erected. . . . His property was first divided into city lots, and so sold in 1717, shortly after his death, which occurred in 1707.—"Nat. Encyc. Am. Biog.," Vol. XII, 58.

missary under Van Twiller, one of the latter's most capable officials. In 1633 he was sent by Van Twiller up the Fresh-Water River to more obviously establish the claim of the Dutch to Connecticut, into which the English were planning to encroach. With this object Van Curler bought the title from the Indians, and completed a redoubt on Dutch Point, named it Fort Good Hope, and armed it with cannon. Van Curler, in 1633, threatened to train one of those guns upon a suspicious little bark then sailing up the river if its captain did not "Heave to!" But the ship passed the fort, and the English landed from it above the fort and soon raised the first house (at Windsor) built by the English in the Connecticut Valley. The leader of the English party would not heed Van Twiller's demand, through Van Curler, that he "depart forthwith with all his people and houses." He answered: "I am here in the name of the King of England, whose servant I am, and here I will remain." The matter was referred to Amsterdam, but, in the meantime, Van Curler became involved in another more exciting experience. Some English traders who had come to the Dutch post to trade had been ambushed and massacred by Indians. Whereupon Van Curler seized the sachem and some other Indians and promptly hanged them. The Pequots flew to arms, and set up an opposition which was not ended until 1644, when Underhill gave the Indians such a terrible lesson near Stamford. But this action by Jacobus van Curler, in 1633, probably had important part in the ultimate loss of Connecticut by the Dutch, for they soon had to abandon Fort Good Hope. Jacobus van Curler was a member of Van Twiller's Council in 1636. The name Corlaer comes up as a place name several times in New York records. Corlaer's Hook, for instance, is associated with Jacobus van Curler (Corlaer), who interested himself, in later life, in the settlement of New Utrecht; he was a member of the first Schepens Court of that municipality in 1659. Ultimately, his Corlaer's Hook estate passed, by purchase, to William Beekman.



There were several members of the Van Curler family in New Netherland during the administration of Van Twiller. Arendt van Curler was at Rensselaerswyck, as assistant commissary and later as commissary, for about a dozen years, from 1634. And in that capacity he was the most important official of the upper Hudson region. He was a cousin of Patroon Van Rensselaer, whose interests at that time seemed to be more powerful than those of even the West India Company. The governor, Van Twiller, was even subservient to Van Rensselaer. At least, he was a nephew of the patroon, and owed his appointment as governor to him. And even Van Twiller, as governor, seemed to have little control over the Van Curlers. One Corlaer, who was trumpeter at Fort Manhattan, was of such independent mind that on one occasion, at the regular hour for trumpeting, he blew a blast of customary volume from the proper corner of the ramparts, even though at that moment some of the guests of the governor were banqueting in that corner, and angrily protested against such braying so close to their ears. So angry were they that they reached for their swords. But the trumpeter also was angry; very angry, indeed, and he used his fists with such vigor and effect that he was able to retire "in good order." No subsequent punishment came to him for this indignity upon the guests of the bibulous governor.

Arendt van Curler has a good record as an Indian mediator. The colony of Rensselaerswyck served at least one good purpose to the province; it was at least a strong bulwark against hostile Indians and French pretensions; and Arendt van Curler had a share in maintaining it as such. He had much influence over the Mohawk Indians. It is said that once in 1642 he "rode into the Mohawk country to rescue three French prisoners from their captors. This was the first of many successful efforts by which Europeans were saved from death by torture. He learned the Mohawk tongue, sat at their council fires, smoked the calumet with them; and later, for the English governors, carried out the same policy

of amity." In 1661 he bought the "Great Flat" of the Mohawk River from the Indians, led a land of settlers from Albany, and founded Schenectady in 1662, "the first agricultural settlement in the province in which farmers could hold land in fee simple, free from feudal annoyances, such as paying rent to a patroon." "So great was his reputation among the (Mohawk) Indians that for many years, even after his death, they always addressed the Dutch and English governors as *Corlaer*. By the French the town he founded was also called *Corlaer*. In 1667, being invited to visit the French governor of Canada, he, while on his way to Quebec, was drowned off Split Rock, in Lake Champlain."<sup>22</sup> Peru Bay, in Essex County, New York, was known as the "Baye Corlaer" to the French; and the English at one time knew Lake Champlain as Corlaer's Lake. Arendt van Curler was probably a magistrate of the Patroon's Court at Rensselaerswyck for some years, and until the coming of Van der Donck, in 1641, as schout-fiscal, or officer of justice of the Rensselaerswyck court, Van Curler was the chief of three *gecommitteerden*, or commissioners, who administered justice in that colony. He was a good executive, and quite possibly his management of the business affairs of the patroonship had as much to do with the outstanding success of Van Rensselaer's manor as had the wealth and political influence of the first patroon. After the death of Kiliaen van Rensselaer, Arendt van Curler became one of the guardians of the young patroon, Johan. By his diplomatic and considerate treatment of the Indians Van Curler kept Rensselaerswyck prosperous, and in a comparative state of peace while other parts of New Netherland were being swept by marauding bands of Indians. During Kieft's administration there was serious trouble with the Indians, but it would have been far more serious had the powerful Iroquois nations not been held passive and well disposed by Van Curler and others. In 1660, Van Curler signed

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22. "Chambers Encyclopaedia."



the treaty concluded with the Esopus Indians; he signed as "deputy of the Colony of Rensselaerswyck."

Allard Anthony, another of the Nine Men of 1652, was destined to come notably into the administration of New Amsterdam, as a municipality. In 1654 Arent van Hattem, one of the first burgomasters of New Amsterdam, returned to Holland, and Allard Anthony was appointed to his office. He was continued as burgomaster in 1655, 1656, 1657, and was again elected in 1660 and 1661. His salary as burgomaster was three hundred and fifty guilders, or about \$140; and he probably acted as city treasurer for some time, for that was the office to which burgomasters, upon retirement, were appointed, in rotation. As burgomaster he was, of course, one of the chief magistrates of the municipal court; and was also *ex officio* orphan master in 1654, with duties like those of a surrogate in the Orphans' Court. Under the English he was sheriff of New York, 1665-67, and 1671-73; and in this connection gained the nickname of "The Hangman." For many years he was a merchant in New Amsterdam, his store being at the corner of Whitehall and Marketfield streets. He acquired much wealth, and had much influence in the city, although many were more popular than he. "His fellow citizens did not regard him as a man of the highest morality"; as a magistrate his record is not enviable; but he was evidently a capable business man. One writer describes him as "rich, influential, conceited and unpopular." He had a farming estate outside city limits, in addition to his city property. He died in 1685, "in middle age."

Most of the last Board of Nine Men, that of 1652, were later connected with the municipal administrations in New Amsterdam. In addition to Beeckman and Anthony, Isaac de Foresst, Arendt van Hattem, Paulus L. van der Grist were prominent in the City Schepens Court. Isaac de Foresst became a large land owner and was a *schepen* in 1658.

Arendt van Hattem was one of the two burgomasters for the first year (1653) of New Amsterdam under burgher gov-

ernment. He had been long in the province, and gave most of his time to fur trading. Most of the magisterial duties during 1653 and 1654 must have devolved upon the other burgomaster, Martin Cregier, for Van Hattem was often "up-country" on fur-trading expeditions, and in 1653 was in Virginia with Provincial Secretary van Tienhoven, the both acting as commissioners of New Netherland. In 1654 he went to Holland, and Allard Anthony took his place as burgomaster.

Paulus Leendertsen van der Grist was one of the adventurous sea captains of the West India Company's service. He may have been in New Netherland earlier than the time of Director-General Kieft, for he is recorded as the owner of "considerable property" in New Amsterdam in 1644. In 1646 he was in command of the West India Company's ship the "Great Gerrit," one of the four vessels assigned to constitute the fleet of Stuyvesant when the latter was appointed Director-General of New Netherland. Under Stuyvesant's administration Captain van der Grist was equipage master or naval agent. He was probably the Captain van der Grist who, at Stuyvesant's command in 1647, "cut out" the "St. Beninio" at New Haven,<sup>23</sup> which high-handed act caused Governor Eaton, of New Haven, to write Stuyvesant as follows:

We have protested, and by these presents do protest against you, Peter Stuyvesant, Governor of the Dutch at Manhattans,

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23. In the first year of Stuyvesant's administration he made it compulsory that all traders in New Netherland ports or territory be licensed. Hearing that a Dutch ship was at New Haven, taking in a cargo without a permit from New Amsterdam, and in this way evading the legal duties, he at once declared that the trader was a smuggler, Stuyvesant considering that New Haven was Dutch territory. He decided to seize the ship. Fortune seemed to point his way, for shortly before his case of smuggling arose the West India Company had sold one of their old vessels, the "Zwol," to a trader at New Haven. The "Zwol" was at that moment in New Amsterdam, ready for delivery to the new owner. So into its holds were stowed a company of soldiers, under the command of Captain van der Grist. The "Zwol" reached New Haven on the "Lord's day," and veered alongside the "St. Beninio." The surprise was complete, and the "St. Beninio" sailed out of New Haven in command of the former crew of the "Zwol" before the astonished Englishmen of New Haven could come



for disturbing the peace between the English and Dutch in these parts . . . . by making unjust claims to our lands and plantations, to our havens and rivers, and by taking a ship out of our harbor, without our license, by your agents and commission; and we hereby profess that whatever inconveniences may hereafter grow, you are the cause and author of it, as we hope to show and prove before our superiors in Europe.

Notwithstanding which, Stuyvesant promptly confiscated ship and cargo, as detected in smuggling and legally seized within New Netherland boundaries. Captain van der Grist, assuming that he and Paulus Leendertsen van der Grist were one and the same, which seems highly probable, took up permanent residence in New Amsterdam in 1648. He had a farm "in the suburbs," and a city home "between Broadway and the North River." He owned a sloop, which he used in his trading in New York waters; and he conducted a general store business in the city. He was a member of the first Schepens Court (1653) of New Amsterdam, was burgomaster in 1657 and 1658, being elected to the same office again in 1661 and 1662. In 1663 he became burgomaster in place of Martin Cregier, when the latter entered military service for the Esopus campaign, Van der Grist being continued as chief magistrate in 1664, the last year of consecutive Dutch rule. Van der Grist had part in the several councils held with Esopus sachems in 1663 and 1664, witnessing the treaty of May 16, 1664, as "P. L. van der Grist." He took no part in colonial affairs after New Netherland passed to the English; indeed, he returned finally (in 1669) to Holland. He was one of the orphan masters of New Amsterdam in 1656, 1659, 1660. Earlier he had been a member of Stuyvesant's Council, having had a seat in this court in 1647, 1648, 1649.

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to the rescue of the owner and captain of the "St. Beninio." Upon arrival at New Amsterdam, the ship and cargo were confiscated, Stuyvesant claiming that it was legally seized within New Netherland territory, which he asserted embraced the whole country from Cape Cod to Cape Henlopen. Later he reduced the northern boundary to Point Judith.—See Bryant's "History of U. S."; Smith's "History of New York"; Brodhead's "History of N. Y."; O'Callaghan's "History of New Netherland."

## CHAPTER XVI. DUTCH MAGISTRATES AND LAWYERS.

### Municipal Courts.\*

A chapter has already been devoted to burgher government. In it the movement which resulted in the erection of a court of burgomasters and schepens in New Amsterdam, followed by the expansion of the system in other municipalities of New Netherland was traced; but little was therein written of the personalities of the local magistrates and lawyers who made the municipal courts the most creditable of those of the Dutch period in New York State.

As stated in Chapter XI, the government of New Amsterdam by a court of two burgomasters and five schepens, under guidance of the schout-fiscal of the province, came into effect following proclamation of Director-General Stuyvesant on February 2, the day of the Feast of Candlemas, 1653. With this court began "the real existence of law courts based on the popular will." "They were the first judges in the colony in any way independent of the proprietary company." The system was not in the first years quite as independent as later development made it, for the burgomasters and schepens until 1658 were appointed by the Director and Council, and until 1660 the schout-fiscal was also the city schout, thus carrying into the local court, in his opinions, the views of the

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\*AUTHORITIES—"Messages and Papers of the Presidents (U. S.)"; Chester's "Legal and Judicial History of New York"; Bryant's "History of the United States"; Innes' "New Amsterdam and Its People"; Werner, in "New York Civil List," and "Constitutional History of the Colony and State of New York"; "National Cyclopaedia of American Biography" (White); Daly's "State of Jurisprudence During the Dutch Period," "History of Bench and Bar of New York"; O'Callaghan's "History of New Netherland"; Scott's "The Courts of the State of New York"; Van Laer's "Translations of the Minutes of the Court of Fort Orange, 1652-60"; also of the "Minutes of the Court of Rensselaerswyck, 1648-52."



Director-General and Council. However, the schout-fiscal had no power in the local court other than that which his legal opinions could influence, for he had no seat on the bench; but when Pieter Tonneman became city schout in 1660 the municipal court reached its fullness of regular operation. It then became known as the Court of the Schout, Burgomasters and Schepens, with the schout as the presiding officer; formerly it had been the Court of Burgomasters and Schepens.

The schout and burgomasters were, in effect, the chief Magistrates, of the city. With five schepens as associate magistrates, they constituted a court with civil and criminal jurisdiction in New Amsterdam, appeal from their decisions being to the Director and Council, who constituted the highest court. The Court of Schout, Burgomasters and Schepens succeeded the Board of Nine Men, for that popular body did not function after 1652.

The burgomasters were, in effect, the mayors of the city, and had many responsibilities.<sup>1</sup> The schepens constituted, in effect, the City Council with the burgomasters as *ex officio* members. As a whole, they were representative of the municipality, men of broad mind, who came more into contact with the problems of every-day life than with the theories of political government and jurisprudence. Most of them were men who had succeeded in commercial life.<sup>2</sup>

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1. They were *ex officio*, chief rulers of the city; principal church wardens; guardians of the poor, of widows and of orphans; without their consent no woman or minor could execute any legal instrument. They assisted in the enactment of city laws, held any city property in trust, farmed the excise, and were keepers of the city seal. Each Burgomaster attended daily, in rotation, during three months in the year, at the City Hall for the despatch of public business; and at the end of the quarter called a meeting of the acting and ancient Burgomasters, to whom he reported the state of the city. Each Burgomaster was allowed a salary of 350 guilders, equal to \$140. One Burgomaster retired annually from office, and then became City Treasurer for the next year.—Werner, in "New York Civil List," 1888 edition, p. 62.

2. "Here, then, in the Stadt Huys of New Amsterdam, the worthy mer-



The burgomasters of New Amsterdam, from 1653 to 1674, were as follows :

1653, Arent van Hattem and Martin Cregier; 1654, Arent van Hattem, until November, when he returned to Holland; Martin Cregier, Allard Anthony, vice Van Hattem; 1655, Allard Anthony and Oloff Stevensen van Cortland; 1656, Allard Anthony and Oloff Stevensen van Cortland; 1657, Allard Anthony and Paulus Leendertsen van der Grist; 1658, Paulus Leendertsen van der Grist and Oloff Stevensen van Cortland; 1659, Oloff Stevensen van Cortland and Martin Cregier; 1660, Martin Cregier; 1660, Allard Anthony and Oloff Stevensen van Cortland, in absence of regular burgomaster, Martin Cregier; 1661, Allard Anthony and Paulus Leendertsen van der Grist; 1662, Oloff Stevensen van Cortland and Cornelis Steenwyck; 1663, Oloff Stevensen van Cortland and Martin Cregier, Paulus Leendertsen van der Grist taking the place of the latter when called into military service; 1664, P. L. van der Grist and Cornelis Steenwyck.

During the first period of English occupation, 1664-73, the mayors were :

Captain Thomas Willett, 1665; Thomas de Lavall, 1666; Thomas Willett, 1667; Cornelis Steenwyck, 1668; Thomas de Lavall, 1671; Mathias Nicolls, 1672; John Lawrence, 1673.

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chants and brewers, Indian traders and ship captains, who usually composed the body of burgomasters and schepens of the little municipality, met and passed their ordinances for the government of the town, or sat as a court of justice to consider the numerous and sometimes queer controversies which were brought before them. Naturally, they were not men who were overstocked with legal lore. Ponderous folios and quartos, in hog-skin, of the civil and imperial laws, of the ordinances of the States General, and of the States of Holland, and the well-thumbed 'Rosebooms rescued' of the Statutes and Customs of Amsterdam, lay before the magistrates, inviting them to lose themselves in the mazes of those abstruse treaties; they preferred, however, as a rule, to render their decisions by the aid of what is known as 'horse sense.' They were fond of settling cases informally, by inducing parties to accept advice before going to trial; failing this they were apt to send their cases for arbitration to one or two good men; whom they could select out of the community, with instructions to reconcile the contending parties, if possible; in one case, in the year 1662, when a question of the sewing of linen caps was involved, the court went so far as to appoint certain 'good women' as arbitrators."—J. H. Innes, in "New Amsterdam and Its People," page 188.



During the second Dutch period the burgomasters were :

Johannes van Brugh, Johannis de Peyster, and Egidius Luyck, in 1673; William Beeckman and Johannis van Brugh, in 1674.

The schepens of New Amsterdam, during the Dutch administrations, were, as given in Chester's "Legal and Judicial History of New York," pp. 124-125.

Paulus Lindersteen van der Grift, Maximilianus van Gheel, Allard Anthony, William Beeckman, Pieter Wolfertsen Couwenhoven, Joachim Pieter Kuyter, Oloff Stevensen van Cortlandt, Johannes Nevius, Johannes de Peyster, Johannes van Brugh, Jacob Stryker, Hendrick Hendricksen Kip, Govert Loockermans, Adrien Blommaert, Hendrick Jansen van der Lin, Cornelis Steenwyck, Isaac de Foreest, Johannes Pietersen van Brugh, Jeronimus Ebbingh, Jacob Kip, Timotheus Gabry, Jacobus Bancker, Isaac Gravenraet, Jacques Cousseau, Nicolaus Meyer, Christoffel Hoogland, Lourens van der Spiegel, Gelyn Verplanck, Francis Rombout and Stephen van Cortlandt.

Several members of the New Amsterdam Schepens Court were of the inferior court it succeeded, the Board of Nine Men; therefore, in Chapter XV biographical reference has been made to Arendt van Hattem, Allard Anthony, Oloff Stevensen van Cortlandt, Paulus Leendertsen van der Grist, William Beeckman, Pieter Wolphertsen van Couwenhoven, Joachim Pieter Kuyter, Hendrick Hendricksen Kip, Govert Loockermans, and Isaac de Foresst. Cornelis Steenwyck first comes into the record as a member of the Director's Council; biographical reference to him will be found in Chapter XIV. The only burgomaster of those who held office during Stuyvesant's time, whose public life has not yet been reviewed, is Martin Cregier.

Martin Cregier (Marten Kregier), who was one of the two burgomasters chosen to bring the system into operation in New Amsterdam, in 1653, had been long in New Netherland. He was in the service of the West India Company

when he first came to the province, which was in the early days. After some time he became an independent trader, and owned and sailed a sloop, trading mostly between Albany and New Amsterdam. In 1643 he received a grant of land, and from that year lived in New Amsterdam. He was an innkeeper owning a tavern opposite Bowling Green. During the period of Indian unrest, he took active military part.

"Marten Cregier" signed a peace treaty, concluded at the settlement of the Esopus, July 15, 1660, by Governor Stuyvesant and the sachems of the tribes of the Esopus. In 1663 "Captain-Lieutenant" Martin Cregier was in charge of the garrison at the Esopus, and in treaty of May 16, 1664, he is referred to as of that military rank. Burgomaster Cregier was esteemed by Stuyvesant for his knowledge of military tactics; he superintended the strengthening of the New Amsterdam defences in 1654, when there was imminent danger of attack by New England forces. He commanded a militia company in the operations which ended Swedish dominion on the Delaware; and in 1657, when all was not well with the two Dutch settlements in that region, Stuyvesant chose Cregier and another to supercede the two colonial governors, Alcocks and Beeckman. Again, in 1659, when the English from Maryland were causing trouble in the Delaware River territory, Martin Cregier was despatched to the South River in command of an armed force, while Heermans and Waldron proceeded to Maryland as ambassadors. Kregier was one of those intrepid fur traders who are happiest when in the woods, in the midst of danger. His roving inclination prevented him from accumulating much wealth, for he could not settle down to commercial life in the city for long enough to well establish a business; and even in his old age he preferred the frontier to the city, indeed, the last years of his life were spent beyond the frontier, for he lived among or near the Mohawk Indians, on the banks of the Mohawk River. In his trading post at that point he died in 1713. Calculating only from the year in



which he received a grant of land in New Amsterdam, he had spent seventy years in the province, so that he was probably a nonogenarian in his last years, possibly a centenarian; his life had been useful as well as adventurous, and there is nothing that is not commendable on record regarding this pioneer magistrate of New York City.

Of the few who were in municipal office during the eight months of the second Dutch period, September, 1673, to July, 1674, William Beeckman has been referred to in Chapter XV as a member of the Board of Nine Men.

Johannes de Peyster was the American progenitor of the De Peyster family, which has given many prominent citizens to New York. He was born in Harlem, Holland, about 1620. He first came to New Amsterdam in 1645, not then, however, to settle, it seems. But a few years later he took permanent residence in the province and, if only because of his wealth which was considerable, he at once became recognized as a leading citizen. He was more than a man of wealth; he had "marked accomplishments and ability," and so was capable of rising to prominence in public affairs. In 1653 he was assessed one hundred guilders, only eleven persons having higher assessment; and of those who were called upon to "provisionally contribute for putting the city in a state of defence" his name was fifth on the list. In 1654, he was fourth of those who offered money to build the palisades, and in 1655 was sixth on the list of subscribers to defray debt incurred in such work. He was a man of independent means, for his estate produced an income sufficient for his support. He was evidently among the wealthiest citizens of New Amsterdam, and, it would seem, was a leader in social circles; at least he "was the first man in New Amsterdam who had a family carriage." His entry into public responsibility was as a cadet of a burgher corps in 1653; in 1655 he was appointed to the Schepens Court. He was a schepen again in 1657, 1658 and 1662; was orphan master in 1659 and 1660; was an alder-

man in 1666, 1667, 1669 and 1673, the year in which the Dutch again temporarily occupied New York, De Peyster assisting in this as burgomaster. He died in 1685. Johannes de Peyster of the next generation was mayor of New York in 1698, and represented the city in the Seventh and Eighth General Assemblies, 1699-1702. In 1705 he was one of the masters of the Colonial Court of Chancery. A greater son of this generation was Abraham, first born of Johannes; in 1700 he was president of the Council and acting governor of New York, and until his death was treasurer of the provinces of New York and New Jersey, as well as chief justice of the Supreme Court and a colonel of militia. Abraham de Peyster built, about 1700, the "first stately dwelling" house erected in New York, at what is now known as Pearl Street, opposite Cedar. The "great garden" of this residence was later the site of the Bank of New York. He was mayor of New York in 1691, and "it was during his mayoralty that the public improvements in the city received the first impulse towards real progress." Arentz Schuyler de Peyster, who gained a distinguished record during the Revolution, but with the English forces, was referred to by Robert Burns in one of his poems.<sup>2a</sup> A grandson of Johannes de Peyster was Abraham (2), who was Puisne Judge of the Colonial Court for many years, and

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2a. "My honor'd Colonel, deep I feel  
"Your interest in the Poet's weal."

—See "Epistle to Colonel de Peyster": Complete Works of Robert Burns, Vol. VI, p. 119, Gebbie & Co.

Arent (Arentz) Schuyler de Peyster was a major in the British Army in America during the Revolution. From his headquarters at Detroit, he exercised strong control over the Indian tribes of the Northwest and the Great Lakes. Afterwards, he rose to the command of the regiment—the Eighth, or King's Foot. Later, after retiring from the Regular Army, he settled in Dumfries, Scotland, where, in 1795, he organized and was given the command of the First Regiment of Dumfries Volunteers, which unit was raised to meet possible emergencies of the French Revolution. Robert Burns, the poet, was a private in this regiment; and his "Poem on Life" was addressed to his Colonel, Arentz Schuyler de Peyster. The Colonel survived the poet by more than a quarter of a century; he reached the age of ninety-six years, death coming to him in 1822, at Dumfries.



Treasurer of the Colony from 1721 until 1767, the two Abrahams de Peyster, father and son, having held that office for sixty-one years. Another of the family, Frederick de Peyster, succeeded to the office in 1767. John de Peyster was twice mayor of Albany, 1729 and 1732, and was the first surrogate there, 1756-66. Several of the family served on the American side during the Revolution, and a later generation was headed by John Watts de Peyster, who was a brigadier-general during the Civil War, and adjutant-general of New York in 1855.

Johannes Pietersen van Brugh, one of the burgomasters of New Amsterdam in 1673, had been connected with that court for many years. He was a schepens from 1655 to 1665. He came to New Netherland in 1650, as a commissary of the West India Company, but soon became a merchant in New Amsterdam, succeeding well. He had a farm outside the city limits, as well as a city residence, on Hoogstadt (Pearl Street). He was orphan master of New Amsterdam in 1663. William Beeckman, who was fellow-burgomaster with Van Brugh in 1674, married a daughter of the latter.

Pieter Wolphertsen van Couwenhoven, who was one of the first magistrates of New Amsterdam, a schepens in 1653, had then been twenty years in the province, engaged in trading and milling. He was also a brewer. He was a delegate to the memorable convention of December, 1653, was a schepens in 1653, 1654, 1658, 1659, 1661 and 1663, was surveyor-general of New Netherland in 1655, and was orphan master of New Amsterdam in 1655, 1657-59 and 1662. He was a lieutenant under Captain-Lieutenant Martin Cregier in the expedition against the Esopus Indians, and distinguished himself in that campaign. His last years were spent upon his farm in New Jersey. He signed the instrument extinguishing the Indian title to Pavonia in 1658, acting as interpreter in those negotiations by which that part of old Bergen County, New Jersey, east of the Hackensack River and Newark Bay was sold for eighty fathoms of wampum, some cloth, a few kettles,

guns and one-half barrel of strong beer. This cleared the way for the founding of Bergen, which was incorporated in 1661, and is now part of Jersey City.

Johannes Nevius, a schepen and also secretary of the court of New Amsterdam, was born about 1627 in Zoelen, in the Netherlands, son of Johan Neeff, or Nevius, a graduate in divinity of the University of Leyden. Johannes also studied at that university, but entered business life instead of the ministry. After coming to New Amsterdam, he became a merchant and importer. He was appointed to the municipal court in December, 1654, to succeed Joachim Pietersen Kuyter as schepen, after the murder of the latter by Indians. For a schepen Nevius was fairly well versed in the law, and was often called upon to arbitrate. He was the first clerk of New York under English rule, being appointed to that office in 1665. The Nevius family has continued in New York State, a distinguished scion of the eighth American generation being Dr. John Livingston Nevius, who was a missionary in China for forty years from 1853. In 1860 Dr. Nevius established the first Presbyterian mission opened in Japan, and later helped to translate the Bible into Chinese.

Jacob Stryker settled in New Amsterdam in 1652; he was of the great burgher class, and evidently possessed of means, for he soon acquired real estate and a farm on Long Island. He was a trader in New Amsterdam. He was orphan master of New Amsterdam in 1663, and in that year was a delegate of New Amsterdam to a convention of Dutch towns, Jan Stryker representing Flatbush at the December, 1653, convention, and also that of 1663, 1664, 1665 and 1674. Jacob Stryker was chosen as one of two representatives of the Dutch inhabitants of the Long Island towns of Flushing, Jamaica, Newtown and Hempstead to attend the 1674 convention called by the last Dutch governor. By which one would infer that the Strykers were of a leading family of that time in New York and vicinity. In later generations one branch of the Stryker family became prominent in Trenton, New Jersey.



Adriaen Blommaert probably was of the family of Patroon Blommaert, a director of the West India Company; Jeronimus Elbingh was a merchant who dealt extensively in peltries; Jacob Kip was referred to by Van Tinhhoven as a tailor; and Isaac Gravenraet, who was a schepen in 1664, had a dry goods store in New Amsterdam. Jacques Cosseau was a schepen in 1662, 1663 and 1665, and in 1664 was one of the Dutch commissioners deputed to negotiate terms of surrender of New Amsterdam to the English; he was of French Huguenot origin, and became one of the wealthiest wholesale and retail merchants of New York.

Christophel Hooglandt (Hoogland, Hoagland), who first appears in public records as a schepen of New Amsterdam in 1655, was born in Harlem, Holland, and was but a youth when he emigrated to New Amsterdam. "Hoagland was an established family name of considerable antiquity in the Netherlands, it being traced back at least a century in Zeeland and Utrecht, and quite as far back in a collateral line of the viscounts and governors of Dormael in Brabant, who claimed descent from the ancient lords of Hoogelant." Christoffel Hooglandt was at first a clerk in a mercantile house in New Amsterdam, but was independently established soon after he attained his majority. In 1655 he became a schepen. He was in that office again in 1664, and from 1668 to 1678 was alderman under the British administration, with the exception of the brief period of Dutch rule, 1673-74, when he was again a schepen. In the seventh American generation from Christoffel Hooglandt was Dr. Cornelius Nevius Hoagland, a famous physician of Brooklyn; the latter founded the Hoagland Laboratory at Brooklyn, and was a regent of the Long Island College Hospital.

Jacobus Bancker, a schepen of 1660 and in a later year president of that body, owned much property in New Amsterdam, where he was a storekeeper. He did considerable import and export trade, and was frequently in Holland, where

he was well known. Once, in 1663, when in Holland, he was called upon by the government for his opinion as to the state of provincial affairs in New Netherland. In the next year he was one of the two representatives of New Amsterdam at the convention of delegates of Dutch towns, called together by Governor Stuyvesant in April, 1664, to consider measures of defence in the possible struggle with English forces. A little later in that year Jacobus Bancker was one of those Dutchmen of New Amsterdam who had the courage to risk official displeasure by signing terms of capitulation with the English commander. In later generations several of the Bancker family entered prominently into public affairs in New York State. Evert Bancker, of New York, was of the Committee of One Hundred in 1775; was a Deputy to the Provincial Congress, 1775-76; was a member of the Council of Safety, in 1777; was Speaker of the New York Assembly in 1780. Abraham Bancker, of Richmond, was a delegate to the first State Convention of New York, 1788, and was Presidential elector in 1804. He was a member of the first Board of Regents of the University of the State of New York, constituted under the act of May, 1784.

Timotheus Gabry, who was a schepen of New Amsterdam in 1660, 1661, 1662 and 1664, had his first experience of colonial life in the unsuccessful Dutch colony established on the Delaware. Of that colony he was secretary; and after it was abandoned in 1658 he came to New Amsterdam. He was a man of superior education, and in 1661 was advanced in provincial office under Stuyvesant, being appointed vendue master. To some extent his influence in official quarters was due perhaps to the fact that he married Margaret Stuyvesant, a half-sister of the governor.

Nicholas (Nicolaeus) de Meyer, who at one time was a schepen of New Amsterdam, became mayor of New York in 1676, and for many years was an alderman. He came to New Netherland in early manhood, and in 1655 married a daughter



of Schout-Fiscal Hendrick van Dyck. He traded in peltries and did considerable business as an exporter and importer. He died in New Amsterdam in 1690, leaving to his six children a substantial fortune in large estates on Manhattan Island, in England, and also in Holland. One of his daughters married Philip Schuyler.

Gelyn (Gulian) Verplanck, one of the last schepens of New Amsterdam, was the son of Abraham Isaac Ver Planck, who was the Abram Planck listed in provincial records as a member of the first representative citizens' body formed, the Twelve Men in 1641. Shortly after Kieft arrived in New Netherland Abraham Isaac ver Planck (Abraham Isaacssen Verplank) secured from him (on May 31, 1638,) a grant of the whole of Paulus (Powles) Hook, "being that section of present Jersey City located in general south of First Street, extending back to the foot of the hill, and bounded on the east and south by the Hudson River and South Cove." He had as under-tenants at Paulus Hook Gerrit Dircksen Blauw, Cornelis Arissen, and others, and tobacco was raised on the plantation. But in 1643 all the buildings were burned by the Indians, and the settlers had to seek refuge in Fort Manhattan. Still Verplanck had paid only \$450 for the estate. From that year Abraham Isaac Verplanck lived in New Amsterdam, and was among those who took the oath of allegiance to the English in 1664. His son, Gulian, (Gelyn), became a prominent New York City merchant, was an alderman in 1683, and was one of the founders of Fishkill, New York. Paulus Hook remained in the Verplanck family until 1698, when it was purchased by Cornelis van Vorst (2d). Many of the Verplanck family have reached prominence in the public affairs of New York State. Philip Verplanck married into the Van Cortlandt family, and represented Cortlandt in the Twentieth Colonial Assembly, 1728-37; in 1746 he was one of the New York commissioners appointed to confer with other colonies as to French and Indian troubles. One Gulian Ver-

planck was Speaker of the State Assembly in 1788-89 and 1796-1797. He was a regent of the University of the State of New York, and first president of the Bank of New York, founded in 1791. Another branch of the family settled in Buffalo in the last century; Isaac A. Verplanck was a judge of the Superior Court of Buffalo from its organization in 1854 until his death in 1873; he was chief judge from 1870.

Francis Rombout, a schepen in 1664, was, it would seem, the Francis Rombout who was mayor of New York in 1679. Stephen van Cortlandt, who was a schepen in 1664, was probably the Stephanus van Cortlandt who was mayor of New York in 1677 and again in 1686. In 1678 Stephen van Cortlandt was judge of the Court of Admiralty; in 1687 he was deputy auditor-general; in 1688 he was colonial secretary; and for eight previous years had been a member of the Governor's Council. In 1698 he was a commissioner of the Port of New York. In 1696 he was appointed principal surrogate of the Prerogative Court, and in 1700 became chief justice of the Supreme Court. Philip van Cortlandt (1749-1831), was made a brigadier-general for bravery at Yorktown; was a delegate to the State Convention which adopted the United States Constitution in 1788; was a State senator in 1791-94; member of Congress, 1793-1809; and in 1824 he accompanied Lafayette in his tour through the United States. Pierre van Cortlandt was the first lieutenant-governor of the State of New York, chosen in 1778; and he was the first vice-chancellor of the University of the State of New York, appointed in 1784. He sat as a senator the first session of the State Senate, and became its president in June, 1778, when chosen as lieutenant-governor. Several other scions of this old New York family have made enviable records in public life in the State.

As stated in Chapter XI, the towns and villages outside of New Amsterdam were not satisfied until they were also permitted to come under the advantages of burgher government.



Some had inferior courts, or some measure of local jurisdiction earlier than 1653, when the New Amsterdam Court of Burgomasters and Schepens began to function. Quoting Chester's "Legal and Judicial History of New York," Vol I, page 134, *et seq.*, the magistrates were as follows:

*Fort Orange, 1654-1664*—Sander Leendertsen, Pieter Hartgers, Frans Barentsen, Pastoor, Jan Verbeck, Jan Tomassen van Dyck, Volckert Jansen, Rutger Jacobsen, Andries Herbertsen, Dirck Jansen Croon, Jacob Jansen Schermerhoorn, Philip Pietersen Schuyler, Goosen Gerritsen van Schlack, Abraham Staats, Adrien Gerritsen, Francis Boon, Evert Jansen Wendel, Gerrit Slechtenhorst, Stoffel Jansen, Jan Hendrick van Bael, and Jan Kostersen van Aecken.

*Willemstadt, 1673*—Gerrit van Slechtenhorst, David Schuyler, Cornelis van Dyck, and Peter Bogardus.

*Schenectady, 1673*—Sander Leendertsen Glen, Herman Vedder, and Barent Janse.

*Wiltwyck, 1661-1664*—Evert Pels, Cornelis Barentsen Slecht, Albert Heymans, Tjerck Chaessen de Witt, Albert Gysbertsen, Thomas Chambers, Gysbert van Imbrock, and Jan Willemsen Houghtaling.

*Swaenenburgh, 1673-1674*—Cornelis Wyncoop, Roeloff Kierstede, Wessel Ten Broeck, Jan Burhans, Joost Adriaensen, and Cornelis Hoogeboom.

*Hurley, 1673-1674*—Louis de Bois, Roeloff Hendricksen, and Adriaen Albertsen Roose.

*Marbletown, 1673-1674*—Jan Jopsten, Jan Broersen, and William Jansen Schudt.

*Breukelen, 1646-1674*—Jan Evertsen Bout, Huyg Aertsen van Rossum, Frederick Lubbertsen, Albert Cornelissen Wantenaer, William Brendenbent, Joris Dirksen, Peter Cornelissen, Joris Rapelje, Teunis Nyssen, Peter Montfort, William Gerritsen van Couwenhoven, Teunis Jansen, Thomas Verdonck, Teunis Gysbert Bogaert, Thomas Lammertse, and Rem Jansen.

*Midwout, 1654-1673*—Jan Stryker, Adriaen Hegeman, Jan Snedecker, Thomas Swardwout, Peter Lott, William Jacobse van Boerum, William Guiljansen, William Willemse, Jan Sned, Jan Stryck, Hendrick Jorissen, William Guilliamsen, Auke Janse.

*Amersfoort, 1654-1673*—Elbert Elbertsen, Nicholas Stillwell, Cornelis de Potter, Peter Claessen, Martin Jansen Breuckelen, Coort Stevensen, and Abram Jorissen.



*New Utrecht*, 1659-1673—Jan Tomassen van Dyck, Jacobus van Corlaer, Rutger Joosten van Brunt, Jacob Hallekens, Balthazar Vos, Jacob Pietersen, Francis de Bruyn, Thomas Jansen van Dyck, Hendrick Mattyssen Smack, Jan van Deventer, and Jan Gysbertse van Meteren.

*Boswyck*, 1661-1673—Peter Jansen de Witt, Jan Tilje Letelier, Jan Cornelissen Zeeauu, Ryck Leydecker, Jan Catjouu, Gysbert Teunissen, Barent Joosten, David Jochimsen, John Lequier, Hendrick Barentse Smith, and Volckert Dirckse.

*Gravesend*, 1650-1674—George Baxter, William Wilkins, Nicholas Stillwell, James Hubbard, William Bowne, Edward Brouse, Thomas Spicer, John Cooke, Samuel Spicer, Richard Stillwell, John Emans, Barent Jurisensen, John Tilton, and Samuel Holms.

*Middleburgh*, 1652-1673—Thomas Hazard, Robert Coe, Richard Gildersleeve, Henry Feake, Richard Betts, William Palmer, John Coe, Edward Jessup, Ralph Hunt, Jonathan Fish, Samuel Coe, John Layton, Francis Swaine, William Bloomfield, John Cochrane, John Burroughs, John Ransden, and Jonathan Hazard.

*Flushing*, 1648-1673—John Townsend, John Hicks, William Toorn, John Underhill, Thomas Saul, Robert Terre, William Lawrence, Edward Farrington, William Noble, William Hallett, John Hinchman, Francis Bloetgoet, and Richard Wildie.

*Hempstead*, 1647-1673—Richard Gildersleeve, John Seaman, John Hicks, ——— Coe, Daniel Whitehead, John Strickland, William Washburn, Robert Ashman, Robert Forman, Robert Jacksen, John Smith, and William Jacobs.

*Rutsdorp*, 1659-1673—Benjamin Coe, Samuel Matthews, Richard Everett, John Townsend, Nathaniel Denton, Andrew Messenger, Robert Coe, Daniel Denton, John Strickland, Thomas Benedict, John Carpenter, and Robert Ashman.

*Oyster Bay*, 1652-1673—John Richbell, Robert Ferman, Nicholas Wright, Thomas Townsend, and Nathaniel Coles.

*Huntington*, 1673-1674—Joseph Whiteman, Isaac Platt, Jonas Wood, and James Chichester.

*Seatalcot*, 1673—Richard Woodhull, and John Bayles.

*Southampton*, 1673—Edward Howell, and Joshua Barnes.

*Easthampton*, 1673—John Mulford, and John Stretton.

*Southold*, 1673—Thomas Hudson.

*Haarlem*, 1660-1673—Jan Pietersen Slot, Daniel Terneur, Peter Cressau, Johannes la Montagne, Philip Cassie, Dirck Claessen, Michael Muyden, Johannes Verveelen, Resolved Waldron,



David des Marest, Joost van Oblinis, Arent Hermans, Jan Petersen Harling, Andriaen Cornelissen, Jacob Pietersen de Groot, and Wolfert Webber.

*Westchester*, 1656-1673—Thomas Wheeler, Thomas Newman, John Lord, John Smith, Josias Gilbert, Nicholas Bayley, Thomas Veall, Thomas Mollinaer, Edward Waters, Robert Heustis, William Betts, John Barker, Nicholas Bayley, Edward Jessup, Joseph Palmer, and Richard Panton.

*Mamaroneck*, 1673—John Busset, and Henry Disbrow.

*Fordham*, 1673—Johannes Verveelen, Michael Bostiaensen, and Valentine Claessen.

*Eastchester*, 1673—John Hoit.

*Staten Island*, 1664-1674—David D'amarex, Pierre Bilyou, Walraven Lutten, Tyse Barentse, ——— Leerdart, Jan Willemse, Gideon Marlet, and Nathan Whiteman.

Regarding some of these magistrates a little is on record. Jan Verbeeck represented Fort Orange in the convention of Dutch towns in 1664, and he was one of the orphan masters at Fort Orange in 1657. Jan Jansen Schermerhoorn was later of Schenectady, and represented that district in Leisler's Assembly of 1690. The family is still one of the oldest of that city. Philip Pietersen Schuyler came from Amsterdam, Holland, to Rensselaerswyck about 1650. In December of that year he married Margaret van Slichtenhorst at that place; and they are the progenitors of the Schuyler Family in America.<sup>3</sup> Peter Schuyler, their son, was the first mayor of

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3. The relations with the Five Nations (Iroquois) were from the beginning under the immediate supervision of Albanians; but were at first principally in charge of Philip Pieterse Schuyler, who came from Amsterdam, Holland, and settled in Albany, then Beverswyck. December, 1650, he married Margitta van Slichterhorst, by whom he had ten children. He was a trader or merchant, and in his business transactions had much to do with the Indians, whom he always treated fairly and honorably. They became much attached to him, the chiefs visiting him socially at his house in the city, and on his farm four miles north of Albany. Near his residence in the city he built a house especially for their entertainment. In 1655 he attended a convention held with the Mohawks, as a delegate from Albany, after which time he had much to do with the varied and frequent negotiations with the Indians of the Five Nations. He assisted in inaugurating the Indian policy pursued by his son, the celebrated Peter Schuyler. He was appointed a magistrate of Albany in 1656, a position he held, with an



Albany (1686-90). He supported Leisler, and was one of the last to yield, doing so in order to bring unity of action against the French. He commanded the expedition against the French on Lake Champlain in 1691; was second in command of the campaign against Montreal in 1709, and went to England with five Indian chieftains in 1710 to awaken the government to the need of vigorous measures against the French.<sup>4</sup> He was acting governor of New York in 1719-20. He presided in the first Court of Sessions held in Albany, and was the first county judge appointed (1691). He died in 1724. Much might be written here of others of the Schuyler family of later generations, and many references will necessarily have to be made in later chapters, for the Schuyler name crops out prominently in connection with some of the most interesting history of New York State, and its capital, Albany. Colonel Peter Schuyler (1710-1762) was in command at Oswego, against the French, in 1756; Major-General Philip John Schuyler was chosen to represent Albany in the first Continental Congress in 1774, and was one of the first major-generals commissioned in the next year. His distinguished war record cannot, however, be given space here.

Goosen Gerritsen van Schack (Schaack, Schaick, Schayck) was of a family for long thereafter connected with Albany.

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interval of four years, until 1679. At that time this was a high office, bestowed only upon citizens of the highest character. This brought him into contact with the Governor and his Council, with whom he corresponded. He accumulated a large landed estate lying in and about Albany, and in the city of New York. He died in May, 1683, leaving a will now on file in the office of the Clerk of the Court of Appeals. He had ten children, eight of whom survived him (two, the eldest-born son and a daughter having died in infancy or youth) five sons and three daughters.—Werner, in "New York Civil List," 1888 edition, footnote of page 220.

4. During the long and bloody wars between France and England, which followed the English Revolution, the status of the Six Nations (Indian) as subjects of Great Britain was stubbornly contested by the French. They strove in every way to seduce the league from their allegiance, and that they failed signally was largely due to the influence of Colonel Peter Schuyler, a Dutchman, and the first mayor of Albany. Schuyler had suc-



Gerrit van Schaick was sheriff of Albany in 1719; Goosie van Schayck held the same responsibility 1728-31; and Jacob van Schaick in 1759-61. Levinus van Schaick was a member of the First General Assembly, 1691, representing Albany. Sybrant Goose van Schaick was judge of the County Court of Albany in 1758-62. Gosen van Schaick (1737-87), of Albany, was a distinguished soldier of the Revolution, rising to the rank of brigadier-general of the regular army and commanding the expedition against the Onondaga Indians in 1779.

Evert Wendel, Albany schepen, was orphan master at Fort Orange in 1657. One Johannis Wendell is listed as a commissioner of Indian affairs in 1690, an Evert Wendel of a later generation being appointed Indian commissioner in 1724. Brandt van Schlechtenhorst (Slechtenhorst) was commissary for Johann van Rensselaer at Rensselaerswyck, succeeding Van der Donck as *hoof'd officier* in Stuyvesant's time.

David Schuyler, a schepen of Wellemstadt in 1673, was perhaps a brother of Philip Pietersen Schuyler. He lived in Albany from about 1650 to 1688, death coming soon after the latter year. His will, dated May, 1688, refers to eight children, five sons and three daughters. His wife was Catalyn Verplanck, whom he married in New York City in 1657. He was a merchant and took little part in public affairs, being a magistrate for only one term. Peter Bogardus is shown as Indian commissioner in 1690.

Thomas Chambers and Gysbert van Imbrock, schepens of

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ceeded to the position of Van Curler in the estimation of the Indians. Whatever "Quidder," as they called him, recommended or disapproved of had the force of law. He gained his power by repeated acts of kindness, and his singular activity and bravery in defence of the province. His house at Albany was the headquarters of the confederates when they visited the city, and he seriously impaired his private fortune by the gifts which he lavished on their chiefs. Finally, in 1710, he at his own expense conducted five Mohawk warriors to England, to lay before Queen Anne the necessity for more active measures against the French. They were received with every attention, presented at court with great solemnity, and their presence in the kingdom formed the nine days' wonder of the time.—Werner, "New York Civil List," 1888 edition, p. 195.



Wiltwyck, represented that town at the convention of delegates of Dutch towns in April, 1664. Wessel Ten Broeck, schepen of Swaenenburgh, was of a prominent Albany or Rensselaerswyck family. Dirck Ten Broeck was mayor of Albany in 1746, and Abraham Ten Broeck in 1779 and 1796. The latter had been a member of the last General Assembly under the British rule, and was a deputy to the first Provincial Congress, 1775. He also served two terms as county judge. Abraham and John Ten Broeck were members of the first commission (1792) constituted to consider the manipulation of New York waterways between the Erie and Champlain lakes and the headwaters of the Hudson River. And the name Ten Broeck has several times been upon the registers of the State legislative houses.

Cornelis Wyncoop, schepen of Swaenenburgh, was of the Rensselaerswyck (Albany) family, Peter Wyncoop having settled in that manor in 1639, coming from Utrecht, Holland. Dirck Wyncoop was a delegate to the convention which ratified the United States Constitution.

Of the magistrates of Breuckelen (Brooklyn), more is known. Jan Evertsen Bout has already been more than once referred to. Frederick Lubbertsen was delegate from Brooklyn to the memorable convention of 1653, also that of 1663; he was a member of the first citizen's body, the Board of Twelve Men, in 1641. Albert Cornelissen Wantenaer and William Bredenbent were delegates from Breuckelen to the convention of Dutch towns in February, 1664, and again in April. Peter Cornelissen was of the Board of Nine Men in 1652, referred to as "the miller." Joris Rapelje (Joris Jansen de Rapalje) was among the Walloons who came in 1623, and among those who settled at Wallabout, founding Breuckelen. He bought 335 acres near Wallabout in 1637, but lived in New Amsterdam for many years thereafter, going to Breuckelen some time before 1655. George Rapalje was a member of the Board of Twelve Men in 1641. Thomas Verdonck and



Teunis Gysberts Bogaerts were delegates from Brooklyn at the convention of February, 1664. Bogaerts and Rapelje were also at the last convention under the Dutch regime, that of March 1674.

Jan Stryker, magistrate of Midwout, has been referred to. Several of the Hegeman family have come into public office. Adriaen Hegeman was at the convention of 1664, representing Flatlands. Another Adriaen Hegeman was clerk of Kings County from 1726-1750; others have been elected to the General Assembly.

Thomas Swartwout, a schepen of Midwout, later Flatbush, was one of the original settlers at that place. He was married to Kendrickjen Barents in Amsterdam, Holland, in 1631, and came with his wife and family to New Netherland twenty years later. In 1651 he was granted, by letters patent, one hundred and sixteen acres of land at Midwout; and on April 13, 1655, was appointed a schepen of the Midwout court. He represented Flatbush in the convention of 1653. No less than sixteen of his descendants served in the Revolutionary War, in grades from that of private to brigadier-general; and many have come into prominent public office in New York State. One John Swartwout was marshal of the United States for the New York District in 1801; he was a sachem of the Tammany Society at the time Aaron Burr was Vice-President; De Witt Clinton was as bitter a political opponent of Swartwout as Burr was of Hamilton; the two former exchanged five shots from the same pistols that Burr and Hamilton fought with, the latter duel, however, being attended by more regrettable result, in the mortal wounding of the great Alexander Hamilton. The whole Swartwout family seemed to have part in the intense political strife of that period; Samuel Swartwout was one of the central figures of a sensational case in 1806-07, having been arrested with Bollman, by order of President Jefferson, for alleged treason, and as accomplices of Aaron Burr in the latter's alleged conspiracy; another



Swartwout—Robert—fought a duel, in 1803, with Richard Riker, district attorney, who was wounded. A later Samuel Swartwout, who was collector of the Port of New York, took advantage of the financial chaos that followed the political attack on the Bank of the United States by Andrew Jackson, by abstracting public moneys, the defalcations being brought to light by the Secretary of the Treasury of the Van Buren administration, in 1838. Another Samuel Swartwout comes into United States records in a more favorable light, Commander Samuel Swartwout being referred to in a message to Congress from President Abraham Lincoln, who hoped that a vote of thanks would be passed to Swartwout for his gallantry in successful naval operations under Farragut, in 1862.

Peter Lott, one of the early magistrates of Midwout, was the first of that family to come into New York records. Johannes Lott was judge of Kings County Court in 1742. Abraham Lott succeeded him in 1745. Johannes E. Lott was appointed in 1793, and served until 1805, and a still later generation of the Lott family to be elevated to the Kings County Court bench being John A. Lott, in 1838, who became a justice of the Supreme Court. William Jacobse(n) van Boerum, magistrate of Midwout, was a delegate from that village to the convention of February, 1664; William Guiliamsen was a delegate at the next convention in that year; and Auke Janse(n) represented Flatbush in the last Dutch convention, that of March, 1674.

John Coe, schepen of Middleburgh (Newtown), was one of the leaders of a considerable force of Long Island settlers, of English families, who marched through Long Island in the autumn of 1663, changing the names of towns, deposing magistrates and appointing new ones, and proclaiming King Charles II as ruler. In the compromise which followed this unrest, the English towns of Long Island were to all intents released from Dutch rule, also from interference by any other American government. During the winter that followed the



towns of Heemstede, Gravesend, Flushing, Newtown and Jamaica united, for mutual protection, with John Scott as president. In the next year the whole of New Netherland passed to the English. John Coe was a delegate from Newtown to the convention of March, 1665, called by the English governor to reorganize local government. Richard Betts was also a delegate. John Coe, possibly of the next generation, was sheriff of Queens County in 1689, and several of the family have been judges of Queens County Court—John Coe, 1699-1702; 1710-23; Benjamin Coe, 1793-1806. Robert Coe who was one of the first magistrates (schepens) of Middleburgh (Newtown), was appointed sheriff of Yorkshire in 1669, that district or sheriffalty comprising the whole of Long Island, Staten Island, and part of the present county of Westchester; Richard Betts was the first sheriff (1665-69).

John Townsend, who was one of the first magistrates of Flushing, has been represented with Thomas Townsend through the many generations in an Oyster Bay family, a scion of which family, James Townsend, was a member of the first Board of Regents of the University of the State of New York. The famous John Underhill, associate of John Townsend, as magistrate of Flushing, is believed to have died at Oyster Bay about 1672. John Palmer, Thomas Hunt and two others represented Westchester in the first General Assembly, 1683. William Lawrence, a schepen of Flushing, came from Great St. Albans, Hertfordshire, England, in 1635, and settled at Flushing, becoming one of the largest land owners at that place. He married Elizabeth Smith, who subsequently became the wife of Sir Philip Carteret, who founded Elizabethtown, New Jersey. John Lawrence was Puisne judge of the Colonial Court of New York in 1693-98. He was mayor of New York in 1673 and 1691. Thomas Lawrence was a member of the first Board of Regents of the University of the State of New York, 1784; and John Lawrence, who was an additional regent in the same year,

was the second judge of the United States District Court of New York District, being appointed in 1794. Nathaniel Lawrence succeeded Aaron Burr as attorney-general of New York. John Hicks, schepen of Flushing, represented that town in two conventions in 1653, and Hempstead in 1664. Thomas Hicks was the first county judge of Queens County, 1691-99. Richard Woodhull, schepen in 1673 of Seatalcot, was probably the delegate of that name who attended the convention of September, 1673, representing Brookhaven. Richard Panton, a schepen of Westchester in 1673, was probably the Richard Ponton, who represented Westchester in the First General Assembly, that of 1683.

More regarding these early magistrates and their descendants will probably be stated in later chapters, particularly in those reviewing the history of jurisprudence in the departments and county divisions.

#### SCHOOTS OF MUNICIPAL COURTS.

In general, the magistrates were chosen more on account of their standing in the community than because of their knowledge of law. Some were, or became, well versed in Dutch law, but as a rule the magistrates relied upon the schouts to make clear the points of law. The schouts were more acquainted with professional practice; at least some of them were. Some were Doctors of Law, though some evidently graduated from the magistracy. Enough has already been written regarding the duties of a schout to make a reiteration here unnecessary. The schouts of municipal courts outside New Amsterdam during the Dutch period were:

*Rensselaerswyck*—Jacob Albertsen ver Planck, Adriaen van der Donck, Nicolas Coorn, Gerrit van Slechtenhorst, Cornelis Teunissen, and Gerrit Swart.

*Esopus*—Roeloff Swartwout, Mattys Capito, William Beckman, and Isaac Gravenraet.

*Haarlem*—Johannes la Montagne, and Resolved Waldron.

*Westchester*—Thomas Wheeler.



*Breuckelen*—Jan Teunissen, David Prevoost, Peter Tonneman, Peter Hegeman, Adriaen Hegeman, and Jacob Stryker.

*Flushing*—William Harck, John Underhill, John Hicks, William Hallett, Tobias Feke, and John Mastine.

*Fort Orange*—Jan Daniels, Jacob Teunissen, and Hans Vosch.

*Willemstadt and Rensselaerswyck*—Andrew Draeyer.

*Schanegtade*—Jan Gerritsen van Marcken.

*New Orange, 1673*—Anthony de Milt.

*New Utrecht*—Nicasius de Sille.

*Gravesend*—James Hubbard, Richard Gibbons, John Morris, John Cooke, and Charles Morgan.

*Middleburgh*—Thomas Newton, Elias Bagley, and Thomas Pettit.

*The Five English Towns*—William Lawrence, and Francis Bloodgood.

*South Seatalcot, Huntington, and East Southold, 1673*—Isaac Arnold.

*Staten Island, 1673*—Peter Biljou.

Some are familiar names. Adriaen van der Donck, for instance, has been the subject of extensive writing in other chapters. So, also, have Johannis la Montagne, David Prevoost, Joachim Pietersen Kuyter, Nicasius de Sille, all of whom were learned in the law. Some have been noticed as magistrates: William Beeckman, John Underhill, John Hicks, James Hubbard, William Lawrence and others. Peter Tonneman resigned the schoutship of Breuckelen court to preside as schout over the New Amsterdam court in 1660. Resolved Waldron was one of the two commissioners sent to Maryland in 1660 by Governor Stuyvesant, to remonstrate with that province for invading the rights of the West India Company on the Delaware. These negotiations were marked by ability and tact on the part of the Dutch commissioners. Gerrit Swart was the second sheriff of Albany (1668), and Andrew Draeyer succeeded him in 1673, for the brief period of Dutch occupation. Isaac Arnold was the first county judge of Suffolk County, appointed in 1693, and serving until 1707.

One schout has not been listed in the foregoing, for the



reason probably that Bergen (Jersey City) is in New Jersey. It was in New Netherland, however, in 1661, when Tielman van Vleck was appointed schout of Bergen court, which had the distinction of introducing burgher government in what is now New Jersey. His commission is dated September 15, 1661.<sup>5</sup> From this instrument it is learned that he was formerly a notary public in New Amsterdam. And an ordinance of the Director-General and Council creating this Schepens Court is informative as to the scope of the municipal courts.<sup>6</sup> The first magistrates of Bergen were: Michel Jansen, Harman Smeeman and Caspar Stynmets. Michael Jansen was one of the founders of Bergen, and had earlier been in Pavonia. Tielman van Vleck tried to get a grant of land "behind Gemoenepaen" (Communipaw) in 1660, but failed.

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5. Whereas, it is requisite to preserve justice in the village of Bergen, situated on the west side of the North River, in New Netherland, that a well qualified person officiates there as Sheriff, for which office being recommended to us the person of Tielman van Vleck, Notary Public within this city; so it is that we, having a full confidence in his abilities, virtue and talents, commissioned and appointed him, so as we do by this, as Sheriff of the aforesaid village to officiate in that capacity in the aforesaid place and its Districts, in conformity with the instruction which he has already received, or which he may receive in future, and in consequence of it to bring to justice every transgressor of any political, civil or criminal laws, ordinances and placards, and to have them mulcted, executed and punished with the penalty comprehended in these, to promote that by his directions and denunciations all criminal cases and misconducts may be brought to light, decided with speed, and all judgments executed without delay, and further to act in this respect in such manner as a good and faithful sheriff is in duty bound to do on the oath which he has taken. We therefore command the Schepens and all the inhabitants within the district of the aforesaid village to acknowledge the said Tielman van Vleck for our officer and sheriff, and to procure him in the exercise of his office, all possible aid whenever it is required, as we deem this beneficial to the service of the country and serviceable to the promotion of justice.

Issued September 15th, 1661.

6. . . . That their Honors do not hope or wish for anything else than the Prosperity and Welfare of their good inhabitants in general and in particular the good people residing in the village of Bergen, situate on the West side of the North River, and that in order that such may be effected and preserved with greater love, peace and amity, and to manifest and to prove in deed to every inhabitant of above-mentioned village the effect thereof,



Herman Smeeman and Engelbert Steenhuysen represented Bergen at the April, 1664, convention of Dutch towns. In July, 1665, after Governor Carteret had established his seat of government at Elizabeth, the Bergen court was reorganized, the judge appointed being: Nicholas Verlett, president; Caspar Steinmets, Harman Smeeman, Elias Michelse (Vreeland) and Ide van Vorst, members; Hans Diedericks, constable. In 1668 Caspar Steinmets and Balthazar Bayard were elected from Bergen to the First Provincial Assembly. In 1672 England was at war with Holland, and on August 10, 1673, "the Holland and Zealand fleets captured the fort at New York, in the name of their High Mightinesses, the Lords States General of the United Netherlands." The fort was renamed Fort William Hendrick, and New York City became New Orange. On August 12, 1673, a demand to surrender

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the Director-General and Council aforesaid, considering the increase and population of said village, have therefore.

Resolved to favor its inhabitants with an inferior Court of Justice, and to constitute it as much as possible, and as circumstances of the country will permit, according to the laudable custom of the City of Amsterdam in Holland, but so that all judgments shall be subject to reversal by and on appeal to the Director-General and Council of New Netherland, to be by their Honors finally disposed of.

In order that all things there may be performed with proper order and respect, it is necessary to choose as Judges honest, intelligent persons, owners of real estate, who are lovers of peace, and well affected subjects of their Lords and Patroons, and of their Supreme Government established here, promoters and professors of the Reformed religion, as it is at present taught in the Churches of the United Netherlands, in conformity to the Word of God, and the order of the Synod of Dortdrecht. Which Court of Justice for the present time, until it shall be herein otherwise ordained by the said Lords Patroons, or their Deputy, shall consist of one Schout being on the spot, who shall, in the name of the Director-General and Council, convoke the appointed Schepens and preside at their meeting; and with him three schepens by which office are, for the present time and ensuing year, commencing the 20th of this month, elected by the Director-General and Council: Michael Jansen, Harman Smeeman and Caspar Stynmets.

Before whom all matters touching civil affairs, security and peace of the inhabitants of Bergen, also justice between man and man, shall be brought, heard and examined, and determined by definitive judgment to the amount of fifty guilders and under without appeal. When the sum is larger, the aggrieved party shall be at liberty to appeal to the Director-General and Council aforesaid, provided that he enters the appeal within the proper time



was sent to "the village of Bergen and the Hamlets and Boueries thereon depending." This they were not reluctant to do. Soon, from a list of chief citizens of Bergen the authorities at New Orange chose five to constitute a new court. They were: Claes Arentse Toers, schout and secretary; Gerrit Gerrits van Wageningen, Thomas Fredericks, Elias Michelsen Vreeland and Peter Marcellissen, schepens. Three days later, at New Orange, these magistrates took the oath of allegiance<sup>7</sup>; and on August 27, 1673, the commander and council of war came over from Orange to organize the town militia. Caspar Steinmets was appointed captain, notwithstanding that a petition was sent to the Council "requesting substantially that Caspar Steinmets may not be allowed any more privileges than were granted him under Mr. Stuyvesant's government." In March, 1674, a proclamation was issued by Governor Colve, stating that "the fortifications of the

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and gives security, according to law, for the principal and costs of suit. . . . In order to provide the good inhabitants of Bergen with cheap and inoppressive justice, the Schout as President, and the Schepens of the Court, must, for the convenience of parties, appear on the Court day, and at the place appointed on pain of forfeiting Twenty Stivers, at the disposition of the board; they being notified at least twenty-four hours before the Court day to appear, by the Court Messenger to be appointed by the Director-General and Council: and double as much for the President unless excused by sickness or absence. . . . Whereas, it is customary in our Fatherland and other well regulated Governments that some change be made annually in the Magistracy, so that some new come in, and a few continue in order to inform the new, the Schepens now appointed shall pay due attention to the conversation, Demeanor and fitness of honest persons, inhabitants of their respective villages, in order to be able about the time of changing or election, to furnish the Director-General and Council with correct information as to who may be found fit, so that some may be then elected by the Director-General and Council.

Dated September 5, 1661.—See Ordinances of Director-General and Council of New Netherland

7. Whereas, we are chosen by the authority of the High and Mighty Lords of the States General to be Magistrates of the Town of Bergen, we do swear in the presence of Almighty God to be true and faithful to said authority, and their Governors for the time being, and that we equally and impartially shall exercise justice between party and parties, without regard to parties or Nations, and that we shall follow such orders and instructions as we from time to time shall receive from the Governor and Council. . . .



City of New Orange are by the good zeal and industry of the burghers so far completed as to be now on the eve of perfection, when this City shall be in such a state of defence that it will be capable (under God) of resisting all attacks of any enemies"; therefore, the schouts, schepens and militia captains were, upon notice, to see that all militia gather at Fort Willem Hendrick, "on penalty that all who will be found negligent therein shall be declared traitors and perjurers, and consequently to be proceeded against as enemies, or be punished with death and confiscation of all their goods, as an example to others."

About ten days later each of the Dutch towns sent a magistrate and its militia officer to Fort Willem Hendrick by command, to confer with Governor Colve and his Council as to plans for mobilization. Those who attended the convention are named in Chapter XII; the delegates from Bergen were Schout Claes Arentse Tours and Captain Caspar Steinmets. All matters were arranged; and the provisions made indicate that the attacking force would have to be strong to overcome the resistance of the Dutch militia, marshalled, or made examples of, by the willing and determined magistrates. But a peace treaty made in Europe made all the provincial plans of no avail.

The above Bergen illustration demonstrates two facts connected with jurisprudence in New York during the Dutch period: That to the end of Dutch rule in the province the government leaned on the magistracy when in trouble; and that public matters rested largely upon the shoulders of the magistrates. Moreover, it shows that the government exercised care in choosing the magistrates and selecting the schouts. Therefore, one might with confidence assert that the municipal courts of the Dutch period were not of low standard. It seems clear that the magistrates were chosen from the leading men of the community, citizens known "by their conversation and demeanor" to be "honest, intelligent persons" well fitted for

the responsibilities of judgeship, and responsible also in material things, as "owners of real estate." The status and function of the schout were very like those of the stipendary magistrate of the municipal courts of the existing British judicial system, the stipendary magistrate being a professional man, graduate of law, who sits with the local magistrates, the justices of the peace, and guides them in interpreting the law, with which they, as men of business, are not expected to be very familiar.







# PART TWO

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## THE ENGLISH PERIOD

Judicial Status of New York, 1664-1776





## CHAPTER XVII.

### THE CONFLICTING LAND TITLES.\*

#### Claims to Sovereignty by England, France, Holland.

As the English viewed the situation, the territory occupied by the Dutch of New Netherland for a half century rightly belonged to the English. Indeed, they looked upon the Dutch as mere squatters. True, the terms of surrender of New Amsterdam to the English in 1664 seemed to contradict such a thought, for the articles of capitulation stipulated that "the Dutch here shall enjoy their own customs concerning their inheritances; that no judgment that has passed any judicature here shall be called in question; that all inferior civil officers and magistrates shall continue as now they are (if they please) until the customary time of new elections, and then new ones to be chosen by themselves, provided such new chosen magistrates shall take the oath of allegiance; and that all differences of contracts and bargains made before this day by any in this country shall be determined according to the manner of the Dutch." It seems that these guarantees were never deliberately repudiated by the Duke of York's government; "on the contrary, the Dutch law continued to be administered by Dutch methods, and in the Dutch language, in certain of the purely Dutch towns, like Albany and Esopus,

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\*AUTHORITIES—Smith's "History of New York"; Scott's "The Courts of the State of New York"; Redfield's "English Colonial Polity and Judicial Administration, 1664-1776," "History of Bench and Bar of New York," 1897; Fowler's "Organization of the Supreme Court, Albany Law Journal," Vol XIX; Fowler's "History of Real Estate in New York," in "Bradford's Laws"; "Memorial History of New York"; Biddle's "Memoir of Cabot"; Werner's "Civil List and Constitutional History of the Colony and State of New York"; Chester's "Legal and Judicial History of New York"; "The Duke of Yorke's Book of Laws, Commonwealth of Pennsylvania" (1879); Bryant's "History of the United States"; Brodhead's "History of the State of New York"; Eastman's "Courts and Lawyers of Pennsylvania"; Francis Parkman's "Pioneers of France in the New World."



until the reoccupation of the province by the English in November, 1674, after the reconquest and occupation by the Dutch since August, 1673"; and, had these privileges and this recognition been incorporated or even referred to in the treaty of Westminster, February 9-19, 1674, by which New Netherland finally passed to the English, the status of Dutch holders of landed estate would have been clearer; but inasmuch as the treaty contained no express reservation in favor of the guarantees of 1664, it was considered to have nullified them.<sup>1</sup> At least the English so viewed the situation; and this attitude strengthened the broader claim which made English common law paramount in the American colonies.

The basis of English rule of the province of New York was: first, the royal patent of the English king, Charles II, to his brother, James, Duke of York, dated March 12, 1664, (old style); second, Colonel Richard Nicolls' commission

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1. So late as 1759, Lieut.-Gov. Cadwallader Colden wrote: "The Dutch of this province, it is probable, think the articles of surrender are still in force and that any breach of them is a piece of injustice to them, and there, among other things, they may, in their own minds, justify themselves in carrying on the illicit trade with Holland, in opposition to the Laws of Trade, which has been carried on from New York for many years." He then argues against any such assumption. (N. Y. Hist. Soc. Coll., 1868 series, p. 168). This was a fruitful subject for hot debate in the province for many years. On November 9th, 1674, the Duke's Deputy Governor confirmed, by proclamation, "all former grants, privileges and all estates legally possessed by any under the Duke of York, before the late (Dutch) government," which the Dutch claimed was only in accordance with the law of *post-liminy*, under which the intervening conquest operated merely to suspend, not to extinguish their rights. On the other hand, it was argued that there had been no conquest; that the Dutch ships had no thought of attempting the conquest of New York when, in August, 1673, they came in under Staten Island; but only to take in wood and water, knowing that there was not sufficient force there to hinder them, but that the Dutch inhabitants treasonably told the Dutch commodore of the absence of the Governor and a greater part of the garrison up the river, and of the defenceless condition of the city, and invited him to consent to take it, which he did without firing a gun; that having voluntarily and without force renounced their allegiance to the English crown and submitted anew to Holland's sovereignty, "they forfeited without doubt all privileges that they could claim by the articles of surrender." (Colden, *Ibid*, 184), Smith's "History of New York," 1814 ed., p. 61, n. has the following: "In New York, the right of *post-liminy* was disregarded and perhaps unknown."



from the Duke to act as his deputy governor; third, the proclamation of Nicolls, addressed to the inhabitants of Long Island, West Chester and Staten Island, from New Utrecht Bay, and dated August 18, 1664, (old style); fourth, the terms of capitulation before referred to.<sup>2</sup>

“To fairly comprehend the judicial status and political situation of New York under the English, we must adapt international law of that period to the fundamental elements

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2. But the judicial status of New York, while under the British crown, is not determined by the terms of the Dutch surrender, nor by the fact of its territory being ceded by the Dutch government to the English king by the two successive treaties of Breda (July 21-31, 1667) and Westminster (Feb. 9-19, 1674). The question of such status, under the rule of international law, involves a larger survey of the field than this; and although after vexing our courts for several generations, it has probably now been laid to rest as having no determining value in the discussion of legal rights; yet, as it must always arise in any attempt, however slight, to trace the history of our jurisprudence, a brief statement of the matter is pertinent.

To know what original common law of New York was, and to trace its development to the present time, one must learn what changes have taken place in its sovereignty; so that, from a lawyer's point of view, it may become important to know whether, at a particular period, the seat of the sovereignty of New York was in London, or at the Hague; for, by an ancient fiction of law, the sovereign is regarded as the sole owner and lord paramount of all the land of his kingdom, and its dependencies, individual holders taking title from him, though no grant of his is provable by any record or otherwise; and by another conceit of jurists, he is the fountain of justice and the author, mediately or immediately, of the law of the land, so that no law or ordinance, as law, can obtain in any part of his dominions without his consent, expressed or implied. The ultimate sovereignty of this territory had been claimed by Great Britain, France, and by the United Provinces of the Netherlands. The French king founded his title to northern New York on the fact that his subjects had, first of Europeans, ascended the St. Lawrence and its tributaries, including Lake Champlain, and had explored and occupied their shores. In like manner, the Netherlands claimed all the country lying between the Connecticut and Delaware rivers, and the land drained by them, upon the alleged fact of their having been the first of Europeans to ascend these rivers, and others intermediate from the sea, and to explore and settle their shores. On the other hand, the English king's title was based on the ultimate fact of Cabot's discovery of the continent in 1497, under the commission of Henry VII, followed in due time by actual occupation at different points on the seacoast by English subjects under Crown grants, prior in point of time to any occupation of contiguous territory by the Dutch, who were consequently regarded as mere interlopers, trespassers and squatters by the English of New England and Virginia, between whom they had wedged themselves. The English government had protested to the government at the Hague against this unwarrantable invasion of Eng-



of English polity and administration as above outlined," writes Henry W. Scott, in his work, "The Courts of the State of New York." "This political problem, worthy of the genius of Edmund Burke, can be solved by no ill advised and superficial consideration of the conflicting principles impressed on the new world by two nations so dissimilar in their traditions, institutions and aspirations." Not yet, even, has the Dutch impress passed out of American life; and it would now seem

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lish territory from time to time, both under the monarchy and the commonwealth, ever since the year 1614, but for one reason or another, easily comprehended when the domestic history of England for the first half of that century is considered, had not found it convenient or politic to vindicate the British title until 1664, shortly after the restoration of the monarchy.

According to a contemporary historian, "there is nothing more perplexing than the delicate relations, in history, of cause and effect, whether in the events or in the recorders of them. There seems to be nothing to check dependent progress, if we travel back over the annals of the world. Who would have thought that when Henry VII of England gave to the Venetian, John Cabot, and his three sons, the right to discover western lands, he would have determined the fact of the fee of the roadway of the New York Bowery, as really happened in other days." Such is not quite the fact; but the records of our courts, both of the province and of the State, abound with cases calling for the judicial determination of property rights of great value, not only in highways, in rivers and streams, but inheritances, which were supposed to depend upon whether the Dutch government was ever vested with the territorial sovereignty of this State, as against England, and, therefore, whether the laws and ordinances of that government, promulgated here during its forty years of occupation, ever had any force or validity *as law*, and so, surviving the English occupation of 1664, still control the use and enjoyment of those rights. In examining these records one knows not which to admire most: the persistent efforts of successive generations of lawyers to convince the Court that the matter at bar was governed by the Dutch and not the English law, or *vice versa*, because the one or the other was the law of the sovereign of the land when the particular right arose—or the ingenuity of the judges who, generally speaking, have succeeded in dodging the question by finding some less interesting and quite commonplace solution of the controversy. At bottom these forensic contests are attempts to establish what was the original common law of New York;—was it the common law, and applicable statutes of England, existing in England at the time of the occupation in 1664, or was it something more or different? If the reduction of the Dutch was a *conquest*, and England took "title by conquest" as understood by the law of nations, which is a part of the Anglo-American common law, the change of sovereigns from Dutch to English did not *ipso facto*, change the system of law theretofore established, or affect existing property rights or incidents of tenure, but the same remained after the conquest, and inured to the benefit of every successor in interest of the original Dutch grantee, unless expressly abrogated



that it never will, having now existed, with at times quite obvious strength, for more than two and a half centuries after the Dutch in America had become governmentally benighted by the transference of their former domain, New Netherland, to the English.

France, England and Holland in the seventeenth century asserted claim to what is now New York territory. The French claim was based on the early exploration and settle-

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by the conqueror. On the other hand, if the English military expedition, which compelled the surrender of the Dutch province, and the submission of its inhabitants to the sovereignty of Great Britain, did not affect "a conquest," but at most a forcible entry upon her own territory, in vindication of her own anterior title and sovereignty, as well founded by her title and sovereignty to Massachusetts and Virginia, then the Dutch law, ordinances and customs never had any validity, *as law*, and ceased, instanter, on the entry of the English. So, too, if the king's original right of preëmption in the soil be conceded, his deed of conveyance, before actual entry, was good in law, and the Duke acquired a perfect title.

As to the effect of the English occupation, *ipso facto*, to displace Dutch law existing here, by introducing English law, it is to be borne in mind that, up to this time, all of England's colonies originated in immigration; not one of them was acquired by conquest, with the doubtful exception of the Spanish island of Jamaica. In her long subsequent career of conquering and annexing French, Spanish, Portuguese and Dutch colonies, in all quarters of the globe, she left them their own laws intact. Hence, in Guiana, in the Cape of Good Hope, and in Ceylon, each afterwards acquired by conquest from the United Netherlands, the Roman-Dutch law as it prevailed in Holland at the time they were respectively conquered, is still at the bottom of their jurisprudence. But in the case of New York, that law, except as the articles of surrender expressly allowed it to survive in certain particulars, was never recognized by any English or provincial court, or by crown lawyers as having any operation here, *as law*, after the surrender, or as governing any of the incidents of land tenure acquired in the province before that date. Ever since then, both before and after the Revolution, the courts of this State appear to have ignored the fact of the Dutch occupation, or, when called on to consider the legal consequences of that occupation upon our jurisprudence, have hopelessly divided on the question, whether New York was to be considered, in law, as acquired by conquest, or on the other hand was, like Massachusetts or Virginia, an English possession by original right, into which the common law and the statutes of the realm then in force, so far as they were applicable to the condition of the province, followed the surrender as certainly as they followed the first settlement of the other English colonies to the east and south of it. The difference between a conquered or ceded territory, and a plantation made by immigration and settlement, on a previously uninhabited territory, or only inhabited by aborigines, is an important factor in determining the question, in



ment of the River St. Lawrence, and the explorations of Samuel de Champlain in northern New York. Verrazzano seems to have made his voyage, in 1524, in the interests of the King of France, though one historian<sup>3</sup> was of opinion "that this voyage, if made at all, was made in the service of Henry the Eighth of England." But Cartier's voyages of 1534 and 1535, the second of which carried him well into the Hochelaga River (St. Lawrence), and as far up that river as the site of Montreal, were certainly not made in English interests. The subsequent operations of French expeditions, down to that of 1609, when Champlain, came within one hundred and fifty miles of meeting Henry Hudson in the wilderness depths of New York State, gave strength to French contentions that, by right of discovery and settlement, French sovereignty should be supreme in North America. Holland's claim found its origin in the discovery of the Hudson River by Henry Hudson in 1609, and subsequent exploration by Dutch navigators and traders, and actual effective colonization; but their title was not strengthened by the outcome of boundary disputes between New England colonies and New Netherland, prior to the granting of charter to James, Duke of York and Albany.<sup>4</sup> On the other hand, the English claim to the North

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English jurisprudence, of what law governs the one or the other. As to the original right of England to what is now New York, as against the Netherlands on the one hand and France on the other, diverse opinions have been expressed by judges, law writers and historians, which the curious in such matters may find interesting.—See Redfield's "English Colonial Polity and Judicial Administration, 1664-1776," "History of Bench and Bar of New York"; Fowler's "Organization of the Supreme Court," Vol. XIX of "Albany Law Journal"; also Fowler's "History of Real Estate in New York," and introduction to "Bradford's Laws," and the same writer's chapters on the "Constitutional History of New York State in the Memorial History of New York"

3. Piddle, "Memoir of Cabot," 275.

4. The Colony of Plymouth was planted in 1620, under a patent issued by King James I. In 1631, the Earl of Arundel, President of the Plymouth Company, granted to Robert, Earl of Warwick, the country from Narragansetts along the shore, forty leagues, and westward to the Pacific Ocean. Connecticut River, however, after its discovery by Block in 1614, was periodically and exclusively visited by Dutch traders for many years. In



American Continent was based on Cabot's discovery in 1497, under commission from Henry VII, of what now constitutes North America. In 1501 Henry VII issued a patent to colonize the New World; but the project was not carried further. However, both the French and the English had colonies along the Atlantic coast prior to the coming of Dutch colonists; for Dutch colonization of New Netherland cannot be deemed to have begun before 1623, when the Walloons were brought over from Holland. The English colonies were established under crown patents, which left no room for Dutch colonization, save at the expense of one or more of the proprietary companies. Therefore, the protestations of the English colonies to the English Government, and of the latter to the Dutch authorities "against this unwarrantable invasion of English territory" were numerous. However, the internal affairs of England and the political situation in Europe pre-

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1632, the arms of the States General were erected at the mouth of the river, at a spot called Kievit's Hoeck (now Saybrook), purchased from the natives for the West India Company. In 1633, Director Van Twiller purchased an extensive and beautiful table land, called the Connittecock, lying on the west bank of the river, some sixty miles from its mouth. . . . Upon this table land a trading post was established, called "The House of Good Hope." The Governor of Massachusetts Bay speedily protested against this acquisition, as an encroachment upon English rights. Director Van Twiller responded, under date of October 4, 1633, claiming rightfulness of possession by purchase. Meantime, the Colony of Plymouth sent out an expedition, which landed about a mile above Good Hope (Hartford) and the English thereafter rapidly settled at various points in Connecticut and upon Long Island, which was also claimed under patent from Earl Stirling. These questions devolved upon Director Stuyvesant to adjust. He accordingly appointed two commissioners, Thomas Willett, a merchant of Plymouth, and George Baxter, employed by Stuyvesant as his Secretary. The Commission fixed the boundary line on Long Island, from the westernmost part of Oyster Bay straight to the sea; on the mainland, the point of departure was on the west side of Greenwich Bay, about four miles from Stamford, the line to run thence up into the country twenty miles, provided it did not come within ten miles of the North River. This was called the Hartford Boundary Treaty of 1650. The States General delayed its confirmation so long as to lose its benefits; and then it was nullified by Connecticut. The English pressed hard upon the Dutch in Westchester, while Massachusetts, under a claim that her patent extended indefinitely westward, proposed to settle a colony on the upper waters of the Hudson, and insisted upon the right to navigate the river in order to reach her alleged possessions. Fort Good



vented resolute action by the English to enforce their claim to sovereignty in New York until the year 1664.

In the meantime, many land transactions had been made between the Dutch Provincial Government and settlers within the territory they claimed and occupied. And the French had made vast grants of land on both sides of Lake Champlain. These, after the English entered into possession—for generations thereafter—gave rise to many land suits, in which title was derived on the one side from the Dutch or the French, and on the other urged through English dominion. “The entire question turned on the point whether England had annexed this territory by prior discovery, or whether by conquest and invasion, it had been reduced to an English dependency. If the former contention were tenable, the English common law was paramount, and had, from the date of discovery, been the law of the land. If, however, it be con-

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Hope was sequestered by the General Court of Hartford, by an act passed April 6, 1654.

After the restoration of Charles II, John Winthrop the younger was sent by the General Court of Hartford as an agent of that colony to England, with instructions to procure a new charter from the King. New letters patent were accordingly issued in April, 1662, confirming the boundaries of the original patent, with enlarged privileges. It gave to the patentees one hundred and twenty miles from the Narragansett River along the coast “toward the southwest, west, and by south,” and from that line westward in its full breadth to the South Sea (Pacific Ocean). The new patent covered not only Long Island, but also all northern New Netherland. For two years Stuyvesant resisted these pretensions to the best of his ability, but was finally glad to accept a compromise, to the effect that there should be mutual forbearance, the Dutch and English towns to be free respectively from interference from either government. This left the English in undisturbed possession of all they had gained by their aggressions. Under the new charter, the colony of Connecticut bought of the Indians all the country lying between Westchester and the North River, including Spuyten Duyvil Creek, which had been purchased by the Dutch fifteen years before.

Charles II, on the 12th of March, 1664, conveyed by patent to his brother James, Duke of York and Albany, all that portion of the present State of Maine included between the rivers St. Croix and Kennebec; also Nantucket, Martha’s Vineyard and Long Island; together with all the land from the west side of the Connecticut River to the east side of Delaware Bay.—Werner, in “Civil List and Constitutional History of the Colony and State of New York,” 1888 ed., pp. 64-66.



ceded that English domination was due to the success of British arms, the law remained as it had been before the conquest, and was so applicable to all causes of action which had origin prior thereto. Taking this latter view, the Dutch possession was that of mere squatters holding possession adverse to the real owners of the soil, and of no legal effect and subject to removal and confiscation upon the forcible or other entry of the lords paramount. The vacillating tactics of the colonial judges, who never sharply and clearly defined their position in this matter, has left the title of eminent domain in doubt and uncertainty," writes Scott. From 1664, however, when the first formal English occupation of New York territory took place, the English common law has controlled the decisions of the New York courts.<sup>5</sup>

The Duke of York and Albany's Laws, promulgated at the Hempstead convention in 1665, held drastic provisions relat-

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5. The question of the validity of the grants of vast tracts of land on both sides of Lake Champlain, made by the French provincial government at Quebec, provoked vehement discussion in the New York Assembly in 1773, when it published a vindication of the British title, as founded on "original right" by virtue of Cabot's discovery, and not by conquest. The question was argued before Kent, Ch. J. in *Jackson ex dem Winthrop vs. Ingraham*, 4, Johns, 163, but the judgment proceeded on other grounds. Another important case in which this question came up was the *Canal Appraisers of the State of New York vs. The People on the relation of George Tibbits*, which was argued and decided in the court for the correction of error (17 Wend. 571). Chancellor Walworth in his opinion said:

"Until the former argument of this cause I had not supposed that any one seriously contended that the Roman-Dutch law which was brought here by the original settlers from Holland, in 1614, remained a part of the law of the colony after the capitulation of Governor Stuyvesant. I also supposed it was generally conceded that the province of New York was claimed by the English by right of discovery, and not by right of conquest; and therefore that when it was taken possession of as an English colony under the Duke of York, in 1664, no formal act was necessary to substitute the common law of England in the place of that law by which the Dutch settlers had previously been governed. In a colony acquired by discovery or occupancy merely, and not by conquest or cession, the discoverers, and new occupants thereof carry with them all the general laws of the mother country which are adapted to their new situation as colonists."

The chancellor further insisted that even if the province be considered acquired by the English by conquest, there was sufficient to show an intention on the part of the conquerors to abrogate the Dutch laws and substitute



ing to conveyances of land.<sup>6</sup> Under the code old land grants were to be "looked upon as valueless unless submitted to the provincial authorities and confirmed by new patents issued by the governor in the duke's name." There was considerable resistance to this ordinance, especially by the English settlers in eastern Long Island, but eventually all land owners had to comply.<sup>7</sup>

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those of England in their place. Lord Mansfield, in *Campbell vs. Hall*, decided in King's Bench in 1774, and reported in 1 Cowper, 204, held the same opinion on this point. Among other cases, the question was argued by the counsel in briefs in *Jackson vs. Gilchrist*, 15 Johnson's Report, 89, and in brief or in opinion the subject appears in *Canal Commissioners vs. The People ex. rel. Tibbits*, 5 Wendell, 423 (1850), and *Bogartus vs. Trinity Church*, 4 Paige Ch., 178 (1833).—Chester's "Legal and Judicial History of New York," Vol. I, p. 191, 192.

6. That henceforth no Sale or alienation of Houses or Lands within this Government shall be holden good in Law except the same be done by Deed in writing under hand and Seal delivered and possession given upon part in the name of the whole by the Seller or his Attorney so Authorized under hand and seal Unless the said Deed be Acknowledged and Recorded according to law.

That all Deeds and Conveyances of Houses and Lands within this Government wherein an Estate of Inheritance is to pass, it shall be expressed in these words: or to the Like effect (viz.) To have and to hold the said houses and Lands Respectively to the party or grantee, his heirs and Assigns forever, Or if it be an Estate Entailed, then to have and to hold, etc.: to the party or grantee, and to the Heirs of his body Lawfully begotten between him and such an one his Wife; or to have and to hold to the Grantee for term of Life, or for so many years, Provided that the Law shall not include former Deeds and Conveyances, but leave them in the same Condition as they were, or shall be in before this Law shall take effect: which shall be from the publication thereof, Provided also That this Law shall not extend to Houses or Lands given by will or Testament, or to any Land granted by the Inhabitants of a Town.

That no Conveyance Deed or Promise whatsoever shall be of Validity if it be obtained by illegal violence imprisonment threatenings or any kind of forcible Compulsion called Dures.

All Covenants or fraudulent Alienations or Conveyances of Lands, Tenements or any hereditaments shall be of no force or validity to defeat any man from his due Debt or Legacies or from any just Tithe Claime or possession of that which is so fraudulently Conveyed.

That after the time aforesaid No Mortgage, Bargain Sale or Grant made of any Houses, Land Rents or other Hereditaments where the Granter remains in Possession shall be of force against other Persons Except the Granter and his heirs under the Same be acknowledge before some Justice of the peace or Superior Officer in the Government and Recorded as is hereafter expressed. And that no Such Bargain Sale or Grant already

made in any way of morgage where the Granter remains in possession shall be in force against others; but the granter or his Heirs except the same shall be entred as is here expressed (that is to say) within one month after the date before mentioned if the party be within this Gouvernement or else where within three Months after he shall returne, And if any such Granter shall refuse being required by the Grantee his Heirs or Assigns to make an acknowledgement of any grant, Sale, Bargain or Mortgage, by him made shall refuse so to do, it shall be in the power of any Justice of peace, to send for the party so refusing, and Commit him to prison without Bail or Mainprize, unless he shall Acknowledge the same, and the Grantee is to enter his Caution with the Clerk of the Court of Sessions, and this shall save his Interest in the meantime, And if it be doubtful whether it be the Deed or Grant of the party he shall be bound with Sureties, to the next Court of Sessions, and the Cautient shall remain good as aforesaid.

And for the recording of all such Grants, Sales and Mortgages That every Clerk of every Court of Sessions shall enter all such Grants, Bargains, Sales and Mortgages of Houses, Lands, Rents and Hereditaments as aforesaid together with the estates of the Granter and Grantee; things and Estates granted, together with the Date thereof.—Duke of Yorke's Laws, published by Commonwealth of Pennsylvania, 1879.

7. . . . new trouble arose in the same region (eastern Long Island) in resistance to the enforcement of the law of renewal of patents—a matter requiring the wisest management. The Court of Sessions decreed in September (1666) that the neglect of the Long Island towns and of individuals to renew their land grants under the Duke of York could be no longer tolerated. It required all Nicoll's skill and firmness to carry out the measure, accompanied as it was by the exaction of fees and quit-rents. After much discontent, however, all the towns of consequence, except Southold and Southampton, yielded, and these complied with the conditions a year or two afterward.—Bryant's "History of United States," Vol. II, 331.







## CHAPTER XVIII.

### THE DUKE OF YORK'S LAWS.\*

The Duke of York and Albany having been granted by his brother, King Charles II, on March 22, 1664, by royal patent, "all that part of the maine Land of New England beginning at a certain place called or known by the name of St. Croix next adjoining to New Scotland in America, and from thence extending thereof to the furthest head of the same as it tendeth Northward; and extending from thence to the River Kenebeque and so upwards by the shortest course to the River Canada Northward. And also all that Island or Islands commonly called by the several name or names of Matowacks or Long Island, situate, lying and being towards the West of Cape Cod and the Narrow Higansetts abutting upon the main land between the two Rivers there called or known by the several names of Connecticut and Hudson's River, together also with the said River called Hudson's River, and all the land from the West side of Connecticut to the East side of Delaware Bay. And also those several islands called or known by the Names of Martin's Vineyard and Nantucket, otherwise called Nantuckett"—having been granted, in short, the entire Atlantic coast from the State of Maine to the Alleghany Mountains, and that portion more particularly bounded

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\*AUTHORITIES—"The Colonial Laws of New York"; New York Historical Society Collections; "The Duke of Yorke's Book of Laws, Commonwealth of Pennsylvania"; Chester's "Legal and Judicial History of New York"; "Records of the Court of New Castle"; Macaulay's "History of England"; Eastman's "Courts and Lawyers of Pennsylvania"; "English Colonial Polity and Judicial Administration, 1664-1776"; Redfield, in "History of the Bench and Bar of New York"; Brodhead's "History of New York"; "Maverick's Letters in the Winthrop Papers," Massachusetts Historical Society Collections; Bryant's "History of United States"; "Clarendon Papers," N. Y. Hist. Soc. Coll., 1869; "Records of New Amsterdam"; Scott's "The Courts of the State of New York"; Brooks' "History of the Court of Common Pleas of the City and County of New York."



on the east by the Connecticut River and on the west by the Delaware River, the Duke of York and Albany lost no time, one of his first acts being to appoint a deputy governor of the province, and to prepare to take possession, forcibly if necessary, of New Netherland and contiguous territory which came within his proprietary province. By the royal patent the Duke of York and Albany had been given almost unlimited power<sup>1</sup>; and, in commissioning Colonel Richard Nicolls as his deputy governor, the Duke of York vested in his representative authority "to perform and exact all and every the powers" granted by the patent, and in accordance with a code of laws compiled, it was for long thought, by Edward Hyde, the first Earl of Clarendon, the Lord Chancellor of England, a commoner who had been raised above all the nobility of England because of the secret marriage of his daughter to the Duke of York. The "Clarendon Papers" support the belief

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I. ". . . unto our said dearest brother James, Duke of York, his Heirs, Deputies, Agents, Commissioners and Assigns, full and absolute power and authority to correct, punish, pardon, govern and rule" the inhabitants of those parts and places, "according to such Laws, Orders, Ordinances, Directions and Instruments as by our said Dearest Brother or his Assigns shall be established; And in defect thereof, in case of necessity, according to the good discretions of his Deputies, Commissioners, Officers or Assigns respectively; as well as in all causes and matters Capital and Criminal as civil, both marine and others; So always as the said Statutes, Ordinances and proceedings be not contrary to but as near as conveniently may be agreeable to the Laws Statutes & Government of this Our Realm of England. And saving and reserving to us Our Heirs and Successors the receiving, hearing and determining of the Appeal and Appeals of all or any Person or Persons of in or belonging to the territories or islands aforesaid in or touching any Judgment or Sentence to be there made or given. And further that it shall and may be lawful to and for our Dearest Brother his Heirs and Assigns by these presents from time to time to nominate, make constitute, ordain and confirm by such name or names stile or stiles as to him or them shall seem good, and likewise to revoke, discharge, change and alter as well all and singular Governors, Officers and Ministers which hereafter shall be by him or them thought fit and needful to be made or used within the aforesaid parts and Islands; and also to make, ordain and establish all manner of Orders, Laws, Directions, Instructions, forms and ceremonies of Government and Magistracy, fit and necessary for and Concerning the Government aforesaid, so always as the same be not contrary to the laws and statutes of this Our Realm of England but as near as may be agreeable thereunto. And the same at all times hereafter to put in execu-



that Lord Clarendon did compile the Duke's Laws<sup>2</sup>; but other evidence seems to show just as positively that they were not compiled by Nicolls, and not indeed in America<sup>2a</sup>; moreover, that they were prepared prior to the departure of Colonel Nicolls for America. It is not known who was the author of them, but it would not be surprising if it were ultimately discovered that Lord Clarendon, who was so well fitted for the task and so close to the royal parties thereto, had some part in the work. Much of it followed the laws of the New England colonies, the Massachusetts and New Haven codes being available in print, in London, the former probably about 1642 and the latter in 1656. The Connecticut code, however, was only in manuscript form at the time the Duke of York received

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tion or abrogate, revoke or change not only within the precincts of the said Territory or Islands, but also upon the Seas in going and coming to and from the same as he or they in their good discretions shall think to be fittest for the good of the Adventurers and Inhabitants there. And We do further of Our Special Grace, certain knowledge and mere motion grant, ordain and declare that such Governors, Officers and Ministers as from time to time shall be authorized and appointed in the manner and form aforesaid shall and may have full power and authority to use and exercise Martial Law in cases of Rebellion, Insurrection and Mutiny in as large and ample Manners as Our Lieutenants in Our Counties within Our Realm of England have or ought to have by force of their Commissions of Lieutenancy or any Law or Statutes of this Our Realm."—Quoted from Brodhead's "History of the State of New York," Vol. II, 651. The original of this patent is in the Public Record Office in London, but a parchment duplicate is in the keeping of the State Archivist, at the State Library, Albany.

2. Governor Nicolls brought with him a code of laws for the colony. It was long believed that this code, famous as the first set of laws prepared for the colony, was drawn up by Clarendon, Lord Chancellor of England, and the First Lord of the Committee on Foreign Plantations—the father-in-law of the Duke of York. That statement is no longer credited, however, documents and letters to the contrary having effectually disproved it.—Chester's "Legal and Judicial History of New York," Vol. I, 155, quoting Clarendon Papers.

2a. In 1669 Colonel Lovelace, the second English governor, was approached by the inhabitants of Long Island to grant them a share in the legislative affairs of the province—which they asserted had been promised to them by Nicolls, in his first proclamation. Governor Lovelace expressed ignorance of any such promise made by his predecessor. "Moreover," states one record, "the governor's instructions forbade his making any alteration in 'ye Lawes of ye government settled before his arrival.'" This might be taken to mean before the arrival of Governor Nicolls. Another record,



his patent, though this fact does not refute the thought that the Duke's code of laws may have been compiled in England.

The Duke's code was patterned largely after the Massachusetts Fundamental Law, the "Body of Liberty"; but the Connecticut code was also drawn upon. Still, whether compiled in London—by Lord Clarendon, than whom "no man wrote abler state papers" said Macaulay,<sup>2b</sup> or by some other London man of law and politics—or in New York by the Governor and his Provincial Council, it is quite clear that the Duke's code was available, in finished form, for the convention of 1665 at Hempstead, also that the Long Islanders who attended that convention, as delegates of their towns, were not expected to make laws, but merely to ratify those already prepared. Brodhead, in his "History of the State of New York," Vol. II, 65, states that the Court of Assizes created by Nicolls was invested with "the supreme power of making, altering and abolishing any laws"; and a Pennsylvanian follows this statement with an assertion that Nicolls and his Council actually did compile the Duke's laws.<sup>2c</sup> Another

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however, seems to indicate that it was to the instructions to himself that Lovelace referred, for when Colonel Lovelace arrived in 1668 he "brought to New York a confirmation by the Duke of York of the code of laws that had been promulgated at Hempstead; among other things, the instructions required him 'to make no alterations in the laws of the governor settled before his arrival.'"

2b. In some respects he was well fitted for his great place. No man wrote abler state papers. No man spoke with more weight and dignity in council and in parliament. No man was better acquainted with general maxims of statecraft. . . . It must be added that he had a strong sense of moral and religious obligation, a sincere reverence for the laws of the country, and a conscientious regard for the honor and interest of the crown.—Macaulay's "History of England," Vol. I, 134.

2c. This Court of Assizes, as yet consisting only of the Governor and his Council, proceeded to prepare a code of laws for the colony under the provisions of the patent. . . .

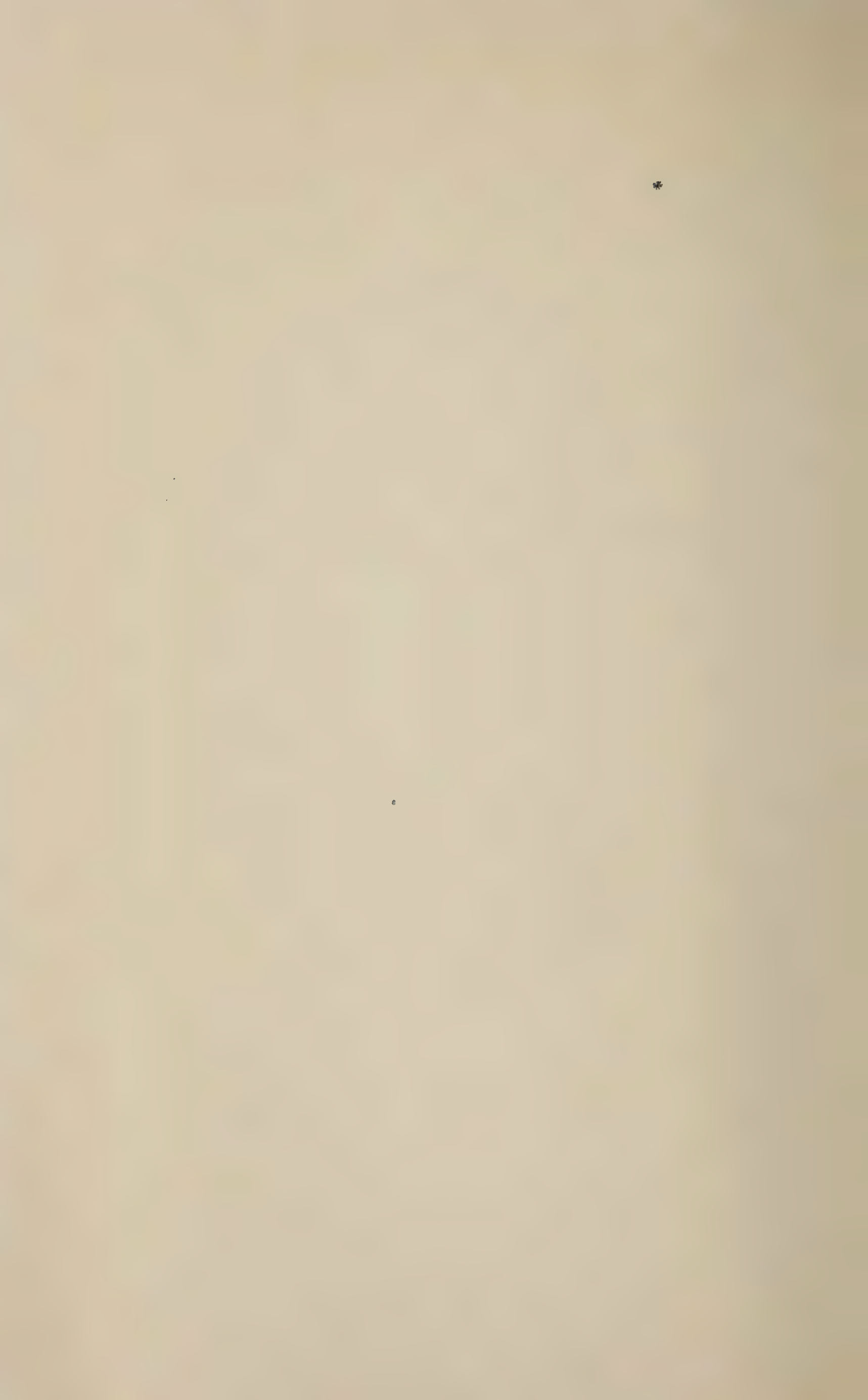
Nicolls appears to have obtained copies of the codes of Massachusetts and New Haven, the latter of which had been printed in London in 1656. The Connecticut code existed only in manuscript, and a transcript could not be obtained in time to be of use, though some of the provisions of Nicolls' Code seem to have been taken therefrom. The Massachusetts "Fundamentals" or "Body of Liberty," an elaborate code of ninety sections or sub-





DUKE OF YORK





narrows the authorship to "Matthew Nicolls, secretary of the colony."<sup>2d</sup>

Deputy Governor Nicolls proved to be well fitted for the responsibility vested in him. The change of government in New Netherland had been attended by little unusual commotion; and the ordinary affairs of New Amsterdam quickly returned to their normal channels. "Nicolls wisely acted as if he were receiving a penitent province that had for a season forgotten its true allegiance, rather than as taking possession of one he had conquered." He did not disturb the order of burgher government in the distinctly Dutch towns, such as Rensselaerswyck, Fort Orange (which now became Albany), and Esopus, of the upper reaches of the Hudson, neither did he interfere in the municipal affairs of New Amsterdam, or of the Dutch group of municipalities in Kings County. And while the Dutch were reluctant to take the oath of allegiance to the English crown, they seemed to be well contented with their state in general. On the other hand, Governor Nicolls had more trouble in the essentially English towns. When the English fleet had appeared, the militant towns of Long Island had rallied in armed force to aid in the subjugation of New Amsterdam, which no one had expected would surren-

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divisions enacted in 1641, appears to have been principally drawn upon. The new code, having been prepared, Nicolls, on February 8, 1665, addressed a letter to each of the towns on Long Island inviting them to send delegates to a meeting to be held at Hempstead to give him "their best advice and information." The convention was held on the appointed day, and consisted of thirty-four delegates. The delegates found that instead of being popular representatives to make laws, they were merely agents to approve those already prepared, although Nicolls accepted a few amendments and promised that when any reasonable alterations should be afterwards offered by any town to the courts of sessions the justices should tender them at the next Assizes "and receive satisfaction thereon."—Eastman's "Courts and Lawyers of Pennsylvania," Vol. I, 34.

2d. "It was known as 'the Duke's laws,' and was drawn up by Matthew Nicolls, secretary of the colony, from the laws of other British provinces, the common law of England, and the former Roman-Dutch law of New Netherland."—"Nat. Cyclo. Am. Biog.," XIII, 448.



der without the firing of a shot; and two days after the entry of the English into the capital Nicolls had promised them that "Deputys shall in convenient time and place be summoned to propose and give their advice in all matters tending to ye peace and benefit of Long Island." They were, of course, actuated by national impulses at the outset; and although the Duke of York did not openly become a Catholic until 1672, all royalty was looked upon with suspicion by rigid Puritans, for past history had shown that most of them leaned toward the Catholic faith. As the first patriotic impulses passed Long Islanders saw that life under the Connecticut system of government, civil and ecclesiastical, would be preferable, *i. e.*, more surely Protestant than life in a royal province of proprietary status. Such an underlying thought made the task of the proprietary governor harder. Moreover, there were some towns of mixed population, and in these towns seditious inclinations soon became obvious.<sup>3</sup> In all, the situation called for administrative tact and ability of high order. These qualities Nicolls possessed. His gentlemanliness and tolerant interest in all classes made his work easier; but he liked his task little after New Jersey had passed to

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3. The authorities of the Dutch towns, such as Beaverwyck, Rensselaerwyck and Esopus, on the upper Hudson, and of New Amsterdam and the purely Dutch towns in what is now Kings County, continued to administer their small affairs, and to distribute justice in their own way. The really restive and even seditious towns were those of a mixed population which had been founded by New Englanders in times of Kieft and Stuyvesant, such as Newtown, Flushing, Hempstead, New Utrecht and Jamaica, and West Chester and East Chester, but more especially the purely English towns, in what is now Suffolk County, never under Dutch Government, but settled under the jurisdiction of Connecticut, except Southold, the oldest town on the Island, which had elected to belong to the jurisdiction of the New Haven colony. These militant towns which had turned out an armed force to assist in the subjugation of New Amsterdam, in response to the royal proclamation, on the arrival of the fleet, were by no means satisfied to lose their connection with Connecticut, with whose religion and system of government they were in complete sympathy. Nicolls promised them, two days after the surrender, that "Deputys shall in convenient time and place be summoned to propose and give their advice in all matters tending to ye peace and benefit of Long Island."



Carteret; what was then left to the Duke of York he considered "hardly worth possessing, much less governing." The Duke of York, indeed, had granted the whole country, from the Hudson to the Delaware, and from latitude 41 degrees 40 minutes to Cape May, to two favorites of the court, Lord Berkeley and Sir George Carteret, before even Nicolls had reached New Amsterdam. Carteret arrived in June, 1665, and Nicolls had perforce, though reluctantly, to relinquish to Carteret authority over that part of the former New Netherland which became New Cæsarea and a few years later New Jersey. After Carteret's arrival Nicolls had no desire to remain in the New York governorship. He asked to be relieved—asked many times during the next two years, but without avail. England and the Duke of York had other and more engrossing affairs in hand during those eventful years, which included the presence of enemy ships of war (Dutch) within London waters, the black plague, which took 100,000 lives, and the great fire which laid in ruins the whole city of London.<sup>3a</sup> It is not surprising, therefore, that a new governor

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3a. The government engaged in war with the United Provinces. The House of Commons readily voted sums unexampled in our history. . . . But such were the extravagance, dishonesty and incapacity of those who had succeeded to his (Cromwell's) authority that this liberality proved worse than useless. The sycophants of the court, ill qualified to contend against the great men who then directed the arms of Holland, against such a statesman as De Witt, and such a commander as De Ruyter, made fortunes rapidly, while the sailors mutinied from very hunger, while the dockyards were unguarded, while the ships were leaky and without rigging. It was at length determined to abandon all schemes of offensive war; and it soon appeared that even a defensive war was a task too hard for that administration. The Dutch fleet sailed up the Thames and burned the ships of war that lay at Chatham. It was said that, on the very day of that great humiliation, the king feasted with the ladies of his seraglio and amused himself with hunting a moth about the supper room. . . . Soon the capital began to feel the miseries of a blockade. . . . The roar of foreign guns was heard for the first and last time by the citizens of London. . . . Great multitudes of people assembled in the streets crying out that England had been bought and sold. The houses and carriages of the ministers were attacked by the populace; and it seemed likely that the government would have to deal with an invasion and with an insurrection. The extreme danger, it is true, soon passed by. A treaty was concluded, very different from



of New York did not arrive until 1668. Until then, distasteful though the office may have been to him, Colonel Nicolls had to continue as deputy governor. Still, it is generally conceded that his administration was thorough and able; that he handled a difficult situation well.

The terms of capitulation of New Amsterdam, signed on September 6, 1664,<sup>4</sup> were faithfully observed by Nicolls. There was no looting, no disorder; private property was everywhere respected; and within a week the burgomasters and schepens of New Amsterdam, of the Stuyvesant régime, resumed their meetings, and for the time being were not interfered with in municipal matters. They were probably not so ill at ease, their plight was not so distressing as their report to the West India Company, on September 16, 1664, would indicate.<sup>5</sup> They had, in fact, not so much to fear from the English soldiers under Nicolls as from the Connecticut col-

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those which Oliver had been in the habit of signing; and the nation was once more at peace, but was in a mood scarcely less fierce and sullen than in the days of shipmoney.

. . . While the ignominious war with Holland was raging, London suffered two great disasters, such as never in so short a space of time befell one city. A pestilence . . . swept away, in six months, more than a hundred thousand human beings. And scarcely had the dead-cart ceased to go its rounds, when a fire, such as had not been known in Europe since the conflagration of Rome under Nero, laid in ruins the whole city—Macaulay's "History of England," Vol. I, 149, 150.

4. The signers were: Johannes de Decker, Nicolas Varleth, Samuel Megapolensis, Cornelis Steenwyck, Jacques Cousseau and Oloff Stevensen van Cortlandt, for the Dutch; and Robert Carr, George Cartwright, John Winthrop, Samuel Wyllys, John Pynchon and Thomas Clarke for the English.

5. The Court resolves to write the following to the Lords Directors:

"Right Honble Prudent Lords, the Lords Directors of the Honble West India Company, Department of Amsterdam.

"Right Honble Lords,

"We, your Honrs loyal, sorrowful and desolate subjects, cannot neglect nor keep from relating the event, which thro' God's pleasure thus unexpectedly happened to us in consequence of your Honrs neglect and forgetfulness of your promise (of military aid)."—Then follows an account of the events of capitulation, the report concluding:

"Meanwhile, since we have no longer to depend on your Honours' promises of protection, we, with all the poor, sorrowing and abandoned Commonalty here must fly for refuge to the Almighty God, not doubting but he will stand by us in this sorely afflicting conjuncture and no more depart



onists. The latter, however, were kept on the other side of the river.

Colonel Nicolls organized the new government without delay. New Amsterdam as well as New Netherland became New York, and a provincial council was soon constituted, those appointed to it being: Robert Needham and Thomas Delavell, who were from England; Thomas Topping and William Wells, of Long Island; and Matthias Nicolls.<sup>6</sup> The latter was appointed provincial secretary.

In October all citizens were required to take the oath of allegiance. There was some resistance at first, the Dutch pointing out that it was not prescribed in the articles of capitulation. However, even Stuyvesant consented when it was shown that it did not affect the terms of surrender. Those who did not wish to take the oath were at liberty to return to Holland; this Pieter Tonneman, city schout, did, in the following February, at the time of the election of new magistrates in New Amsterdam. His place, as city schout, was taken by Allard Anthony. However, it is evident by the names of the new magistrates<sup>7</sup> that the English did not wish then to control or influence the election.

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from us: And we remain—Understood—your sorrowful and abandoned subjects. . . .

"Pieter Tonneman (Schout), Paulus Leenderzen van der Grist and Cornelis Steenwyck (Burgomasters), Jacob Backer, Timotheus Gabry, Isaack Graevenraat and Nicholaas de Meyer (Schepens). Done in Jorck heretofore named Amsterdam in New Netherland, Ao. 1664, the 16th September."—Quoted from "Records of New Amsterdam," Vol. V, pp. 114-116.

6. He may have been a relative of Governor Nicolls; and is described as "a lawyer from Islip, Northamptonshire," who came out with the expedition.

6. Another account reads:

". . . as he (Governor Nicolls) was a soldier, not a lawyer, he no doubt availed himself to the assistance of Matthias Nicolls, an English lawyer, who had settled in New Amsterdam before it was captured by the English."—See "History of the Court of Common Pleas of City and County of New York," (J. W. Brooks, 1896), p. 194.

7. Cornelis Stenwyck and Oloff Stevensen van Cortlandt, burgomasters; Timotheus Gabry, Johannes van Brugh, Johannes de Peyster, Jacob Kip, schepens; Allard Anthony, schout.



The negotiations with Connecticut as to boundaries brought an admission by the latter colony that Long Island was rightly New York territory; and while the boundary commissioners defined the boundaries on the mainland so erroneously and so palpably in Connecticut's favor, that the territory left to New York on the mainland would reach no farther up the Hudson River than fifty miles on its eastern bank—which cartographic blunder Governor Nicolls at once pointed out in report to the Earl of Clarendon<sup>8</sup>—the status of Long Island was clear; so the convention of February-March, 1665, at which the Duke of York's Code of Laws was promulgated, was confined, it seems, to the ridings of Yorkshire

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8. In the settlement of the boundary on the mainland a singular want of knowledge of the topography of the country was shown on both sides, unless there was, as has sometimes been suggested, a sharp advantage taken by one side of the ignorance of the other. The line, it was understood in general terms, should be run about twenty miles east of the Hudson River. That agreed upon was to start at tidewater on the Mamaroneck Creek and run thence north-northwest to the southern boundary of Massachusetts. But the mouth of the Mamaroneck Creek is much less than twenty miles from the Hudson, and a line drawn from it north-northwest would cross that river within fifty miles of New York.

This boundary would give to Connecticut a large, and the most valuable portion of the late province of New Netherland. The blunder was so substantially in favor of Connecticut that the suggestion of fraud can hardly be sustained. That the beginning of the line was twenty miles from the Hudson was clearly a mistake; and the commissioners can hardly have realized that the line crossed the river. But it did not escape the notice of the Governor, who, in a letter to the Earl of Clarendon (see "Clarendon Papers," N. Y. Hist. Soc. Coll., 1869, p. 76) pointed out some of the preposterous consequences:

"Your Ldpp will allsoe perceiue by this inclosed determinacon betweene the Commissrs with the Governor and councill of Conecticut that those Townes upon the maine to the Eastward of N. Yorke did properly belong to their precedent patentt, soe that there remaynes only, One small Towne to his Royall highnesse of all that tract of land from Connecticut Riuer which is all the North part and soe cold that few or none will bestow their labours. Only one Towne is seated wth Planters to which or very near the Indenture reacheth. Aboue that 70 miles is Albany seated, who are noe planters but only a towne of Trade with the Indians. Thus the extent of the Dukes Pattent is described to yor Ldpp."

By the one towne "to which or very near the Indenture reacheth," seventy miles below Albany, the Governor must have meant Esopus. A line from the mouth of the Mamaroneck running north-northwest and touching Esopus would necessarily if produced cross the river at that point.



(Long Island, Eastchester and Westchester), wherein the laws were to be immediately effective.<sup>9</sup>

The convention opened at Hempstead, Long Island, on February 28, 1665, and continued for two or three days. Two delegates of each of the seventeen towns, or districts, of the ridings of Yorkshire attended,<sup>10</sup> and on March 1 adopted the Duke's laws, which seem to have been prepared to meet the particular needs of English colonists in general; at least they reflected some of the agitation of previous years. The English settlers had hoped to gain all the popular rights which the people of Massachusetts and Connecticut enjoyed; and though they did not gain all, it is clear that they gained some, for, as stated on the title page of the digest of these laws, gathered into one volume "for the publicke use of the Territoryes in America," the code was "Collected out of the Seuerall Laws now in force in his Majesties American Col-

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As if doubting the wisdom of this settlement of the boundary, Nicolls adds: "I humbly beg your Ldpp to take the whole matter into serious consideration, for if the Duke will improve this place to the vtmost, Neither the trade, the Riuer, nor the Adjacent lands must be devided from this Collony, but remayne Entire."—"Clarendon Papers."

Twenty years later, a new line was drawn, beginning at Byram River, which is essentially the present boundary between New York and Connecticut.

9. To Long Island, thus made . . . a part of New York, the name of Yorkshire was given. That, with the neighboring country, was afterward divided into three judicial districts, or ridings, in each of which a court was to sit three times a year. The present Queen's County (excepting the town of Newtown) and Westchester formed the North Riding; Newtown, the present King's County and Staten Island made the West Riding; the present Suffolk alone was the East Riding. There was, however, some question whether Staten Island belonged to New Jersey or New York, which was not settled until 1668, and seems to have been referred to the Proprietary in England. Samuel Maverick, one of the Commissioners, writing in February, 1669, to Governor Winthrop, says, on the authority of a letter from Nicolls—who returned to England in the previous autumn: "Staten Iland is adiudged to belong to N. Yorke." It is, he says in another letter, "the most commodiosest seate and richest land I haue seene in America."—Bryant's "History of U. S.,"; also "Maverick Letters in the Winthrop Papers." Mass. Hist. Soc. Coll., 4th series, Vol. VII.

10. Jacques Corteleau and Younger Hope, New Utrecht; James Hubbard and John Boone, Gravesend; Elbert Elbertsen and Roeloffe Martense, Flatlands; John Stryker and Hendrick Gucksen, Flatbush; John Stealman



onyes and Plantations."<sup>11</sup> In some respects, the Duke's laws improved on the Massachusetts and Connecticut codes, for the severe religious restrictions of the New England codes were disregarded. This in itself, however, gave rise to suspicion, knowing as the colonists possibly did that the Duke was inclined to Catholicism. Some of the measures were objected to by the delegates, and some slight concessions were made by Nicolls, and many amendments were taken under advisement by the governor, the delegates believing that they would be accepted, but the code was passed by the delegates substantially as submitted. They even went so far as to sign a memorial to the Duke of York approving the laws; and by so doing brought themselves into public odium,<sup>13</sup> for as a whole the laws did not meet with approval by the English

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and Guisbert Tunis, Bushwick; Hendrick Lubbertsen and John Evertsen, Brooklyn; Richard Betts and John Coe, Newtown; Elias Doughty and Richard Cornhill, Flushing; Daniel Denton and Thomas Benedict, Jamaica; John Hicks and Robert Jackson, Hempstead; John Underhill and Matthias Harvey, Oyster Bay; Jonas Wood and John Ketcham, Huntington; Daniel Lane and Roger Barton, Brookhaven; William Wells and John Youngs, Southold; Thomas Topping and John Howell, Southampton; Thomas Baker and John Stretton, Easthampton; Edward Jessup and John Quimby, Westchester.

## II.

## LAWES.

Established by the Authority of his Majesties Letters patents, granted to his Royal Highnes, James, Duke of Yorke and Albany; Bearing Date the 12th Day of March in the Sixteenth year of the Raigne of our Sovereigne Lord, Kinge Charles the Second.

Digested into one Volume for the publicke use of the Territoryes in America under the Government of his Royall Highnesse.

Collected out of the Severall Laws now in force in his Majesties American Colonyes and Plantations.

Published March the 1st Anno Domini, 1664, at a general meeting at Hemsted upon Longe Island by viture of a Commission from his Royall Highness, James, Duke of Yorke and Albany given to

Colonell Richard Nicolls Deputy Gouverneur, bearing date the Second day of April, 1664.

13. Much animosity was displayed by the English inhabitants against their deputies for their ready acquiescence in the proceedings of the Hempstead convention. Most of them had signed a memorial to the Duke of York, approving their laws.

In 1666 an ordinance was passed, which declared it a penal offence to in any way reflect on those who had thus committed their constituencies to



inhabitants. In 1691 this code was entirely repealed by the First General Assembly after the Revolution of 1688, "as being in spirit contrary to the constitution of England, and the practice of the government of their Majesties' other plantations in America."<sup>14</sup>

The "Duke's Laws," or "Nicoll's Code" as they are sometimes called, were arranged somewhat after the order of a modern digest, the subjects beginning with *Absence* and ending with *Warrant*; "but the arrangement under the various headings is unscientific, and it is necessary to read practically the whole code to ascertain the law relative to any particular subject."

While the code did not expressly provide for a Court of Assizes as the supreme judicial tribunal, its appellate jurisdiction was set out therein, and a clause fixed its sessions, the Duke's laws prescribing the holding of one annual session of this court, on the last Thursday in September, at New York City. While the Court of Assizes was, in effect, a continuation of the Dutch plan of a high court functioning in the Council of the Director-General, it was, in fact, not only the executive voice. The governor and his council were members of this court, but two justices of each of the judicial districts, or ridings, were also seated. Sometimes the court was even larger. On at least one occasion, (October 6, 1680), the tribunal was formidable, having in all thirty-nine members, the normal bench being increased, for this case, by inclusion

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this obnoxious code, by subscribing to the hypocritical and obnoxious address to His Royal Highness, the Duke of York. It was prescribed that the offender be brought before the Court of Sessions, and if the gravamen of the offence so warranted, held for the next assize.—Scott's "Courts of the State of New York," p. 62.

14. In 1757, the first historian who has written on this subject, says that all "laws made here antecedent to this period (1691) are disregarded, both by the Legislature and the Courts of Law; the validity of the old grants of the powers of government, in several American colonies, is very much doubted in this province."



of the mayor and aldermen of New York City, and the two commissaries at Albany, besides others.<sup>15</sup>

The Court of Assizes had exclusive jurisdiction in cases of capital offenses, but, to avoid delay, the Governor and Council could issue a commission of oyer and terminer for prompt trial of a cause, instead of holding all over for the annual session. Under the terms of the patent an appeal lay to the King in Council from the judgments of the Court of Assizes. Besides its annual session, the Court of Assizes might be called at any time to hear and determine civil and criminal cases which required a speedy despatch.<sup>16</sup>

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15. This was an appeal from a judgment of the court at the Whorekill, and involved the title to four hundred and thirteen acres of land, not therefore a case of the greatest importance. There are, however, records of other sessions of this court at which extremely important matters were passed upon, when no more than five or six persons, including the Governor and Provincial Secretary, sat.

16. Except in cases of appeal, the process issued for the trial of actions at this court was the Governor's special warrant. Twelve jurors were impanelled in all cases tried before the court. All appeals to the Court of Assizes were made by a petition to the Governor and Council, and security was required in civil cases from the appellant for the prosecution of his appeal. In cases of a criminal nature, not capital, the party was required not only to give bail for his appearance, but also for his good behaviour until the hearing. With the appeal and securing the party appealing was required to file a brief statement in writing under his own or his attorney's hand of the grounds and reasons of his appeal eight days before the beginning of the court to which he appealed. On the filing of an appeal, a fee of ten shillings was exacted, besides two shillings and six pence to the clerk. No summons, pleading, judgment, or any kind of proceedings in courts of justice were to be abated, arrested, or reversed upon any kind of circumstantial errors or mistakes, if the person or cause "be rightly understood & Intended by the Court."

By an amendment of the laws passed at a session of the court in September, 1665, it was provided:

Where the Original Point is matter of equity the proceedings shall be by way of Bill and delivered in answers upon Oath and by the examination of witnesses, in like manner as is used in the Court of Chancery in England, and due regard must be had that the Defendant have timely notice thereof, as is appointed at Common Law; which is eight dayes warning before the court shall sit.—(See "Duke of York's Laws," p. 61.

Where the laws made no provision for the disposition of a given case it was provided as follows:

In regard it is almost impossible to provided Sufficient Lawes in all Cases, or proper Punishments for all Crimes the Court of Sessions shall



If we may assume that the Court of Assizes came into being with the organization of a Council by Governor Nicolls, its erection would date from October, 1664; but the first session, proper, of this court was held in September-October of the next year, the justices sitting in the Fort at New York, and the session opening on September 28, 1665. On the first day the case of John Richbell against the inhabitants of the town of Huntington was tried "before a full bench, Governor

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not take further Cognizance of any Case or Crimes whereof there is not provision made in some Lawes but to remit the Case or Crime, with due Examination and proof to the Next Court of Assizes where matters of Equity shall be decided, or Punishment awarded according to the discretion of the Bench and not Contrary to the known Lawes of England.

No justice of the peace who had voted in any inferior court in a case appealed from was permitted to have any vote in the Superior Court appealed to, and in all cases of appeal the appellate court was required to judge the case according to former evidence and no other, unless some material witness was not then in the country or was unnecessarily hindered from giving evidence at the trial below the Appellate Court: Only rectifying what is amiss therein, and where matter of fact is found to agree with the former Court and the Judgment according to Law; not to revoke Sentence or Judgment; but to abate or increase damages as shall be Judged Right.

The capital offenses of which the Court of Assizes had exclusive jurisdiction, except when it delegated the same by commissions of oyer and terminer, were constituted by the following:

#### CAPITAL LAWES.

1. If any person within this Government shall by direct exprest, impious or presumptuous ways, deny the true God and his Attrobutes, he shall be put to death.
2. If any person shall commit any wilful and premeditated Murder he shall be put to Death.
3. If any person Slayeth another with Sword or Dagger who hath no weapon to defend himself: he shall be put to Death.
4. If any man shall slay, or Cause another to be Slain by lying in wait privily for him or by poisoning or any such wicked Conspiracy: he shall be put to Death.
5. If any man or woman shall lye with any Beast or Bruite Creature by Carnal Copulation they shall be put to Death, and the Beast shall be Burned.
6. If any man lyeth with mankind as he lyeth with a woman, they shall be put to Death, unless the one party were Forced or be under fourteen Years of age, in which Case he shall be punished at the Discretion of the Court of Assizes.
7. If any person forcibly Stealeth or carrieth away any mankind: he shall be put to Death.



Nicolls presiding, and a jury of seven." John Rider appeared for the plaintiff, and "Mr. Leveridge (was) attorney for the defendants."

At this session of court, legislative matters were considered also, certain amendments of the Duke's laws, tentatively accepted by Governor Nicolls at the Hempstead Convention of the previous spring, being adopted. According to Brodhead, this court was all-powerful, having certainly as much authority as had the Council of the Dutch governors, for the latter did concede some degree of legislative authority to the

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8. If any person shall bear false witness maliciously and on purpose to take away a man's life, He shall be put to Death.

9. If any man shall Traitorously deny his Majestyes right and titles to his Crownes and Dominions, or shall raise Armies to resist his Authority, he shall be put to Death.

10. If any man shall treacherously conspire or Publicly attempt to invade or Surprize any Town or Towns, Fort or Forts, within this Government, He shall be put to Death.

11. If any Child or Children, above sixteen years of age and of Sufficient understanding, shall smite their Natural Father or Mother, unless thereunto provoked an forct for their selfe preservation from Death or Mayming, at the Complaint of the said Father and Mother, and not otherwise, they being Sufficient witness thereof, that Child or those Children so offending shall be put to Death.—"Duke of York's Laws," pp. 14-15.

These provisions were substantially taken from the Massachusetts *Body of Liberty*, but the provision of that code which established as capital offenses idolatry, witchcraft, adultery, rape and rebellious stubbornness in children were not followed.

There were, however, other capital offenses: the malicious setting afire of any dwelling-house, church, storehouse, outhouse, barn, stable or stack of hay, corn or wood, was punishable by death, in the discretion of the court, and when it is considered that so late as the beginning of the nineteenth century there were about two hundred offenses punishable under English law by death, the Duke's Laws seem to have been lenient.

In some other respects, however, the New York law was harsh. "Persons stealing hogs or boats or canoes were punished for the first offense by having one of their ears cut off, for the next more severe punishment, as the court might direct. Burglars and highway robbers were to be branded on the forehead for the first offense, again branded and severely whipped for the second offense, and put to death for the third. Larceny of goods to the value of ten shillings or over was punished by whipping and the exaction of a fine. Forgery, which was punishable by death in England as late as 1820, was punished by standing in the pillory three several court days, rendering double damages to the party wronged, and being disabled to give any evidence or verdict to any court or magistrate.



popular bodies, whereas under the Duke's code the inhabitants were powerless.<sup>17</sup>

Next in rank to the Court of Assizes was the Court of Sessions. Yorkshire was divided into three judicial districts, or ridings, and by the Nicolls' code each was to be served by a Court of Sessions, consisting of justices of the peace, who were appointed by the governor and Council. "The Laws do not prescribe the number of these justices. Sessions were held regularly three times in a year in each Riding, but afterwards, by an amendment to the Laws, twice in a year." These courts had civil jurisdiction in all cases wherein five or more pounds were involved, with right of appeal to the Court of Assizes in cases involving more than twenty pounds. "All cases involving more than twenty pounds might, however, be originally tried at the Court of Assizes by the governor's special warrant." The Court of Sessions also had criminal

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17. The Governor and his Council remained the real lawmakers as well as the interpreters of the laws they made. Before long, it is true, the court of assize deliberated with closed doors upon the general concerns of the province and made such changes in the laws as were thought proper. But the Duke of York who, by his patent, had "full and absolute power" disapproved of legislative assemblies as inconsistent with the form of government he had established in his province. Yet he supposed no harm and much good might result from the justices being allowed once a year to meet with the Governor and his Council and make desirable changes in the laws which, after all, were subject to his own approval. These justices he complacently assumed would be chosen by the people themselves as their representatives, if another constitution were allowed. Moreover, the Court of Assize was the most convenient place for the publication of any new laws, or of any business of general concern. In establishing that court the Duke's deputy did not concede any political privileges to the people. All its officers were his own subordinates; none of them his colleagues. Nicolls was and continued to be, a provincial autocrat who exercised, indeed, his delegated powers with the prudence and moderation which belonged to his character, but who, in adroitly allowing his official dependents apparently to have with himself the responsibility of legislation did not in the least curtail his own vast authority.—Brodhead's "History of the State of New York," Vol. II, 63-64.

This high court (of Assize) had original jurisdiction of all criminal prosecutions, and of civil actions for the recovery of more than £20, and was the final court of appeal, except as it permitted a further appeal to the Crown. It was also made a vehicle, a veritable *lit de justice*—for promulgating and recording the ordinances of the Duke and his Council in



jurisdiction in all but capital cases. They functioned also as an Orphans' Court, and performed many duties of executive character. No appeal lay from their findings in civil cases involving less than twenty pounds, except "where there is a dubiousness in the expression of the Law."<sup>18</sup>

"All original process was required to set out the name in which the party sued, whether in his own name or as an executor or administrator, etc. The justices or the high sheriff issued all writs or warrants, except in the case of special warrants from the governor. The eldest justice of the peace, in the absence of the governor, deputy governor, or some one of the Council, pronounced the decrees, or sentences of the court.<sup>19</sup> The clerk of the sessions certified to the sheriff, before the sitting of the court, what and how many cases were entered for trial thereat; whereupon the sheriff issued warrants to the constables of the several towns of the jurisdiction for jurymen, Proportionable to the causes with regard to the equality of the number from each town and according to the warrants. The constable then notified as many of the overseers of the several towns as might be required

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England, and those of his Deputy and Council here. Its territorial jurisdiction was as extensive as the Duke's possessions, and therefore included the Pemaquid country (between the Saint Croix and Kennebec, in Maine), Martha's Vineyard, Nantucket, Fisher's, now Newcastle, in Delaware, and, for a portion of its history, New Jersey, besides, of course, New York proper, as far north and west as Schenectady—"History of the Bench and Bar of New York, English Colonial Polity and Judicial Administration, 1664-1776," by Redfield.

18. In all cases the plaintiff was required to file his declaration eight days before the day of hearing, and to enter into a recognizance to pay the cost of a jury for one day. Where the defendant lived at a distance from the court, he was to be served with the heads of the plaintiff's declaration as well as the summons at the place of his abode. The defendant was required to file an answer. If the judgment was for the plaintiff, it was required to be endorsed on the declaration; if for the defendant, on the answer.—Eastman's "Courts and Lawyers of Pennsylvania," Vol. I, 38.

19. Except in case of Natural Imperfections, or agreement among the Justices themselves, it be otherwise determined to any other Person of them, In either of which cases the Justices shall refuse to do His Office, or enter his dissent to the prejudice of the Court.



to attend as jurymen. Talesmen might be selected by the court from persons attending the court, or inhabitants of the town where the session was held."

The constitution of the jury caused much dissatisfaction, and this, perhaps, was in time instanced as one of the points at which the Duke of York's Laws were out of harmony with the constitutional rights of Englishmen.<sup>20</sup> On the other

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20. While general legislative power *for England* was never claimed by any of her sovereigns, it was never doubted that the Crown possessed this high prerogative power over the *colonies*, and that this power was communicable to a subject. In New York, the Duke of York's deputy-governor might, as he did, declare that "no jury shall exceed the number of seven, nor be under six, unless in special causes upon Life and Death, the justices shall think fit to appoint twelve,"—the verdict, in civil cases, to be by a majority vote and perjury to be a capital felony in certain cases. But in England, we are told, "the most violent and imperious Plantagenet never fancied himself competent to enact, without the consent of his Great Council, that a jury should consist of ten persons, instead of twelve, that a widow's dower should be a fourth instead of a third, that perjury should be a felony, or that the custom of gavelkind should be introduced into Yorkshire."—Macaulay's "History of England," I, 35.

20. No jury was to exceed the number of seven, nor be under six, "unless in special cases upon life and death, the Justices shall thinke fitt to appoint twelve." All juries were required to be sworn truly to try between party and party, and to find all matters of fact, with the damages and costs, according to the evidence, the justices directing the jury in points of law.

"And if there bee matter of apparent equity upon the forfeiture of an Obligation, breach of Covenant without damage or the like, the Bench shall determine such matters of equity.

"In all cases wherein the Law is obscure, so as the Jury cannot be Satisfied therein, they have Liberty to present a special verdict (*viz.*) If the law be so in such a point, We find for the plaintiffs, but if the Law be otherwise, We find for the Defendant, in which case the determination doth properly belong to the Court, And all Juryes shall have liberty in matter of fact, if they cannot finds the maine Issue, yet to find and present in their verdict so much as they Can."

Another curious provision reads:

"Whensoever any Jury or Jurores are not Clear in their Judgements concerning any Case, they shall have liberty in open Court (but not otherwise), to advise with any particular man upon the Bench, *or any other whom they shall think fitt* to Resolve and direct them before they give in their Verdict."

Except in cases of life and death, a majority of the jury might bring in a verdict, the minority being concluded by the majority without allowance of any protest by any of them to the contrary. Challenges were allowed to jurors on the ground of relationship, and the court is to judge of any other just exceptions against jurors besides kindred. Any one revealing



hand, fees were not excessive,<sup>21</sup> and, if pompous ceremony meant anything to the ordinary layman, the proceedings of the Court of Sessions probably impressed the average inhabitant.<sup>22</sup> The proceedings in at least one case in the Court of Oyer and Terminer show that sentence was actually pronounced upon the criminal before he had been tried, the sentence, indeed, being arrived at by the Governor and Council before the commission was issued for trial by jury. And the

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the dissenting votes of a jury or arbitration forfeited ten shillings for the first offense, and for further offenses of this nature such greater fine as the court should impose. Jurymen were allowed three shillings and sixpence per diem,—Eastman's "Courts and Lawyers of Pennsylvania."

21. In all civil cases there was a docket fee ranging from two shillings and sixpence, in cases under five pounds, to twenty shillings, in cases involving from twenty to forty pounds, and two shillings and sixpence for every ten pounds above forty, such fees to be devoted to the defraying of court charges. All causes were to be tried in the order in which they were entered.

No one was to be put to death without the testimony of two or more witnesses, the confession of the party, or other equivalent circumstances. Every witness in a civil action might require from the party at whose suit he appeared two shillings per diem, whether he gave his evidence voluntarily or was served with a subpoena, but unless served with a subpoena it was in his option whether he should appear or not.

In all actions, whether civil or criminal, the party losing the suit was required to pay all costs. The justices composing the courts received certain fees for the issue of process. Originally, they received no compensation for their services upon the bench, but by an amendment to the Laws they were each allowed twenty pounds per annum, payable out of the public rates, for their services.

22. And whereas there is great Respect due, and by all persons ought to be given to Courts which so nearly represent his Majesties sacred Person, and that such order, gravity and decorum, which doth manifest the Authority of a Court, may be maintained. These rules and formes following are to be observed for beginning, Continuing and proceeding in the said Court.

The Stile of the Court to be entered thus:

At a Court of Sessions held at ——— the — day of ——— by his Majesties Authority in the Seventeenth year of the Raigne of our Sovereigne Lord, Charles the Second, by the grace of God of Great Brittain, France and Ireland King; Defender of the Faith, etc.: And in the year of our Lord 1664 present.

Insert the name of the Governoure. Silence Commanded Then let the Cryer or under Sheriff make proclamation and Say, O yes, O yes, O yes.

Silence is commanded in the Court whilst his Majesties Governoure, Counsell and Justices are Sitting upon pain of Imprisonment.

After Silence is Commanded Lett the Cryer make Proclamation Say-



instructions to the latter were so explicit that no other finding than *Guilty* seemed to be a possibility.<sup>23</sup>

The general affairs of the English towns, under the Duke of York's Code, were within the jurisdiction of the Constable's, or Town Court, this taking the place, in Yorkshire, of the *Schepens* Courts of the Dutch system. The executive power in Yorkshire was in the hands of a high sheriff, appointed annually by the governor, the three ridings of Yorkshire in turn furnishing the candidate. Each town had a board of at first eight but later four overseers, elected by the freemen, who also chose one of the eight to act as constable. They were the town officers for all purposes, executive and magisterial.<sup>24</sup> Assessments were to be made for church purposes, and a church with capacity for two hundred persons was to be erected in every town that had no meeting house.

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ing: All manner of Persons that have any thing to do at this Court, draw near and give Attendance; and if any one have any Plaint to Enter, or Suit to procecute, Lett them come forth and they shall be heard.

When Silence is thus commanded and Proclamation made upon Calling the Dockett, the Cryer shall Call for the Plaintiffe.

Calling for the Plaintiffe.

A. B., come forth and prosecute the Action against C. D., or else thou wilt be non Suited. And the Plaintiffe putting in his Declaration, the Cryer shall Call for the Defendant.

Calling for the Defendant.

C. D., come forth and save thee and thy Bayle, or else thou wilt forfeit thy Recognizance.

For proceeding in the said Court.

Warrants to be issued by the Clerk.

Whosoever shall speak in Derogation of the Sentence or Judgment of any Court shall be fined at the Discretion of the next Court of Sessions or Assizes.

23. An attempt by one Marcus Jacobson, known by other names, but best as *The Long Finne*, attempted to rouse the Swedes of the Delaware region to rebellion, in 1669, during the administration of Governor Lovelace. The movement was nipped in the bud, and Jacobson was arrested. The case was considered important, a matter which the Governor and his Council should handle with directness, vigor, and alacrity, yet of such magnitude that the Governor hesitated to act on his own responsibility. While awaiting advice from the English Government, he urged the official in charge on the Delaware, Captain John Carre, to keep vigilant watch, to prevent a spreading of the revolt. On September 15th he wrote to Capt. Carre, stating that



Action in this respect was, however, dilatory. Slavery was recognized as legal, as there were many negro slaves already in the province; but unkind treatment of them, or of servants, was punishable. Trading between Indians and whites was restricted; there were very many ordinances providing for minor matters of discipline, for licenses, trading and so forth; no Christian was to be molested for minor difference of doctrine, but no Indian was to be permitted "to powwow, or perform outward worship to the devil." The militia law included all persons over sixteen years old, with the militia expense equitably shared by all the towns.

The high sheriff was, it seems, a most important public functionary of the Court of Sessions. In minor criminal cases the prosecuting witness usually was plaintiff, but in the more serious cases the high sheriff prosecuted in the name of the King, sometimes in the name of the Duke. Attorneys were early admitted to plead, and while, in 1677, the governor

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all business is waiting "upon that breath that must animate this little body politique of ours, so that what I do recommend unto you now must rather respect the stopping of the spreading of the contagion, that it grow not further, than by any way of amputating or cutting of any member to make the cure more perfect."

But a month later, the case of the "Long Finne" could be dealt with by the Governor and his Council, advice having, it would seem, been received from England. On October 18th, at a meeting of the Council, "upon serious and due consideration had of the insurrection . . . it is adjudged that the Long Finne deserves to die for the same, yet in regard that many others being concerned with him, in that insurrection, might be involved in the same Premunire if the rigour of the law should be extended, and among them divers simple and ignorant people, *it is thought fit and ordered that the said Long Finne shall be publicly and severely whipped and stigmatized or branded in the face with the letter R, with an inscription written in great letters and put upon his breast, that he received that punishment for attempted rebellion, after which he be secured until he can be sent and sold to the Barbadoes or some other of these remoter plantations.*"

Although prejudged, the Governor gave semblance of regularity to the case by commissioning Matthias Nicolls and certain other persons, on November 22nd, to go to the Delaware for the trial of the Long Finne and other rebels. The court procedure, in the matter of the Long Finne, followed the pre-arranged form, at the trial before the commissioners. It opened at Newcastle on December 6th, and took the following order:

Upon the metting of the Court, let a proclamation be made by saying, O



and Council issued an order that "pleading attorneys be no longer allowed to practice in the government but for the depending causes," the order must have been rescinded or disregarded, for attorneys are named through all the records of the courts. It was early ordered that "no person be admitted to plead for any other person as an attorney in court without he first have his admittance of the court, or have a warrant of attorney for his so doing from his client." An order of the court in 1667 reads: "The cryer of the court is to have for every attorney that shall be admitted and sworn in court twelve gilders or half a beaver." Attorneys, upon admission to practice, had to take oath not to exact excessive fees, nor take fees in the same action from both parties.<sup>25</sup> The Duke's laws provided that the high sheriff could be assigned by the court to act as attorney for "any poore person not able to plead his own case."<sup>26</sup> Presumably he did so *gratis*. The sheriff, like the schout, was the public prosecutor. He drew

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yes, O yes, Silence is commanded in the Court whilst his Majesty's Commission are sitting upon pain of punishment.

Let the Commission be read and the Commission called upon afterwards, if any shall be absent let their names be recorded.

Then let the proclamation be made again by O yes, as before, after which say: All manner of persons that have anything to doe at this special Court, held by Commission from the Right Honorable Francis Lovelace, Esq., Governor Generall under his Royal Highness, the Duke of York, of all his Territories in America, draw near to give your attendance, and if any one have any plaint to enter or suite to prosecute let them come forth and they shall be heard.

After this let a jury of twelve good men be empannelled.

Then let the Long Finne prisoner in the Fort be called for and brought to the Bar.

Upon which the jury is to be called over and numbered one, two, etc., and if the prisoner have no exception against either of them let them be sworne as directed in the Book of Laws for Trial of criminals and bid to look upon the prisoner at the Bar.

The form of oath is as followeth: You do swear by the Everliving God that you will conscientiously try and deliver your verdict between our Sovereign Lord and King, and the prisoner at the Bar, according to evidence and the laws of the country so help you God, and the contents of this book. Then let the prisoner be again called upon and bid to hold up his right hand: viz., John Binckson, alias Marcus Coningsmarke, alias Coningsmarcus, alias Matthew Hincks. . . . Then proceed with the indictment as follows: John



up the so-called *indictments*, which were in fact *informations*, the Duke's laws having made no provision for grand juries; one such *information* is quoted below.<sup>27</sup>

The first high sheriff appointed for the three ridings of Yorkshire was William Wells, of Southold. He was assisted by three deputies, one deputy sheriff in each riding. In 1666 the office of deputy sheriff was abolished, but that of high sheriff was continued until 1683; and in place of deputy sheriffs high constables were appointed. The first for the North Riding of Yorkshire was John Underhill. These officers were appointed for one year, but the justices of the peace "continued in office at the pleasure of the governor." Daniel Denton, of Jamaica; John Hicks, of Hempstead; Jonas Wood, of Huntington, and James Hubbard, of Gravesend, were among the early justices of the peace in Yorkshire. John Manning was sheriff of Albany in 1665, being appointed in

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Binckson, Thou standest here indicted by the name of John Bincksen, alias Ceningsmarke . . . for that having not the fear of God before thine eyes but being instigated by the devil upon or about the 28th day of August, in the 21st year of the Reign of our Sovereign Lord, Charles the 2nd, by the Grace of God of England, Scotland, France and Ireland, King; Defender of the Faith, etc., Annoque Domini 1669, at Christina and at several other times and places before thou didst most wickedly, traitorously, feloniously and maliciously conspire and attempt to invade by force of arms this Government settled under the allegiance and protection of his Majesty and also didst most traitorously solicit and entice divers and threaten others of his Majesty's good subjects to betray their allegiance to his Majesty the King of England, persuading them to revolt and adhere to a foreign prince, that is to say, to the King of Sweden. In prosecution whereof thou didst appoint and cause to be held Riotous, Routous and unlawful Assemblages, breaking the peace of our Sovereign Lord, the King, and the laws of the Government in such cases provided. John Binckson, etc., what has thou to say for thyself, Art thou guilty of the felony and treason laid to thy charge, or not guilty? If he says not guilty, then ask him, By whom wilt thou be tried? If he say by God and his country, say, God send thee a good deliverance.

Then call the witnesses and let them be sworn either to their testimony already given in, or to what they will then declare upon their oaths.

Upon which the Jury is to have their charge giving them directing them to find the matter of Fact according to the Evidence, and then let them be called over as they go out to consult upon their verdict in which they must all agree.

When the jury returns to deliver in their verdict to the Court let them be called over again and then asked: Gents, Are you agreed upon your ver-



April. Allard Anthony was appointed sheriff of New York in June of same year. In July, 1667, Manning succeeded Anthony at New York, and held the office until 1671, four years being the maximum term any person could successively hold the office. The sheriff was barred from holding any other public office during his incumbency.

Jurisprudence in New York under the first English administration was undoubtedly complicated by the observance of the terms of surrender of New Amsterdam, in 1664. It developed the anomaly of a government functioning under two legal systems which could not be merged without conflict in some of the vital principles.<sup>28</sup> However, the Dutch code became to all intents inoperative after 1674, and the Duke of York's Code of Lawes<sup>29</sup> gave way to a better English code in 1683. It is, however, difficult to change the customs of a people by statute or ordinance; ordinances are more likely, in fact, to reflect and be influenced by the prevailing customs. Dutch influence undoubtedly helped to mould laws of succeeding English systems in New York State.

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dict in this case, in difference between your Sovereign Lord, the King, and the prisoner at the Bar? Upon their saying yes, ask who shall speak for you. Then the . . . bring in their verdict and the . . . Then read the verdict and say: Gentlemen, this is your verdict upon which you are all agreed: upon their saying yes, call that the prisoner be taken from the bar and secured. Through all the instruments of this case ran clearly the impression that sentence had already been pronounced, that the prisoner was guilty. What would have happened had the jury found the prisoner not guilty one can only conjecture. The Governor and Council, by their instructions to the Commission, evidently had no doubt as to the verdict, or were confident that the jurymen would be carefully empanelled.

The outcome of the trial was that *Long Finne* soon afterwards was placed on the ship "Fort Albany" and transported to Barbadoes, there to be sold into slavery.—See the "Duke of Yorks' Book of Laws," Commonwealth of Pennsylvania, 1879.

24. Particular provision was made for town governments. The several towns were authorized annually on the first or second day of April to elect a constable, and at first sight, and afterward, by a subsequent amendment, four overseers. These overseers were the assessors of the town and with the constable were empowered to make regulations respecting matters which concerned the police and good government of the town. The constable and overseers were required annually to appoint two of the overseers



to make the rate for building and repairing the church, for the maintenance of the minister, and for the support of the poor. From the overseers the constable selected the jurors, who attended the courts of session and assize. Every town, at its own expense, must provide a pair of stocks for offenders and a pound for cattle, besides prisons and pillories in places where courts of session were held.

. . . the town court was composed of the constable and overseers. It had cognizance of all causes for debts and trespass under five pounds; and the justice of the peace was authorized, but not required, to preside in the court . . .

All actions of debt, accounts, slander, and actions on the case concerning debts and accounts, were to be tried in the jurisdiction where the cause of action arose. Debts and trespasses under five pounds were to be arbitrated by two persons, selected by the constable of the place, and if either party refused the justice of the peace should choose three arbitrators, whose award should be final. All actions or cases from five to twenty pounds were to be tried at the sessions, from whence there should be no appeal. Any person falsely pretending greater damages or debts than due, to vex his adversary, should pay treble damages. If the action be entered and the parties compromise it, yet the agreement should be entered by the clerk of the court.

Upon the death of any person, the constable and two overseers should repair to the house of the deceased to inquire after the manner of the death, and whether he left any will or testament. But no administration should be granted, except to the widow or child, until the third session after the person's death. The surplus of the personal estate was divided as follows: one-third to the widow, and the other two-thirds among the children, except that the eldest son should have a double portion.

All ameracements and fines, not expressly regulated by law, were to be imposed at the discretion of the court. . . .

No arrest could be made on the Sabbath, or "day of humiliation for the death of Charles the First, of blessed memory," or on the anniversary of the restoration of Charles the Second, except of rioters, felons, and persons escaped out of prison. Persons necessarily attending courts should be exempt from arrest. All arrests, writs, warrants and proclamations were to be in the name of His Majesty.

All assessments were to be made by the constable and eight overseers of the parish, proportionable to the estate of the inhabitants; and the justices of the peace were exempt from assessments during the continuance in office, except only for payments to the church.

Persons of known ability, when imprisoned, must pay for their support till the second day of the next session after their arrest, and longer if there be a concealment of property.

To rebuke an officer with foul words, so that he depart through fear without doing his office, should be taken for an assault. A servant or workman convicted of assaulting his master or dame should be imprisoned.

No foreigner or stranger could have attachment against an inhabitant without giving security for costs.

No justice of the peace, sheriff, constable, or clerk of the court while in office should be permitted to be attorney in any case, unless assigned by the court on request.



No Christian should be kept in bond, slavery or captivity, except persons adjudged thereto by authority, or such as had willingly sold or might sell themselves.

Every town must set out its bounds within twelve months after they were granted, and it was required that once in three years the oldest town should give notice to the neighboring towns to go (over) the bounds between their towns, and to renew their marks; the time for perambulation to be between the twentieth and the last day of February, under the penalty of five pounds for neglect thereof. Owners of adjoining lands were required to go the bounds between their lands once a year if requested, under penalty of ten shillings.

No person was permitted to follow the business of brewing beer for sale but those skilled in the art.

The name and surname of every inhabitant in the several parishes must be registered; and it was provided that the minister or town clerk should truly and plainly record all marriages, births and burials in a book to be provided by the church wardens.

It was provided that no body should be buried except in public places, and in the presence of three or four of the neighbors, one of whom should be an overseer of the parish.

"Whereas, the public worship of God is much discredited for the want of painful and able ministers to instruct the people in the true religion, and for want of convenient places capable to receive any assembly of people in a decent manner for celebrating God's holy ordinances," it was ordered that a church should be built in the most convenient part of each parish capable to receive and accommodate two hundred persons. To prevent scandalous and ignorant pretenders to the ministry from intruding themselves as teachers, no minister could be admitted to officiate within the government but such as should produce testimonials to the governor that he received the ordination either from some Protestant bishop or ministers within some part of his majesty's dominions, or the dominions of any foreign prince of the Reformed religion; upon which testimonials the governor should induct the said minister into the parish that should make presentation of him. Ministers of every church must preach every Sunday and pray for the King, Queen, Duke of York and the royal family; and marry persons after legal publication or license. No person should be molested, fined or imprisoned for differing in judgment in matters of religion, who professed Christianity. Church wardens must report twice a year of all profaneness, Sabbath breaking, fornication, adultery, and all such abominable sins. No person employed about the bed of any man, woman or child as surgeon, midwife, physician or other person, should exercise or put in practice any art contrary to the known rules of the art in such ministry or occupation.

The constable should whip or punish any one when no other officer was appointed to do it.

All sales and alienations of property must be by deed, or last will and testament.

No condemned person could be buried near the place of execution.

Every parish minister was enjoined to pray and preach on the anniversary of the deliverance from the Gunpowder Treason, November 5, 1605,



and on January 30 "to manifest the detestation of the barbarous murder of Charles I in 1649," and on May 29th, "the birthday of Charles II, of blessed memory."

Every town must have a marking or fresh-brand for horses. No ox, cow, or such like cattle could be killed for sale or for private use without notice given thereof to the town registrar.

No person could be a common victualler, or keeper of a cookshop or house of entertainment without a certificate of his good behavior from the constable and two overseers of the parish; nor suffer any one to drink excessively in their houses after nine o'clock at night, under the penalty of two shillings and sixpence.

No purchase of land from the Indians should be valid without a license from the governor, and the purchaser must bring the sachem or right owner before him, to confess satisfaction. No one was permitted to sell, give, or barter, directly or indirectly, any gun powder, bullet, shot, or any vessel of burthen, or row-boat (canoe excepted), with any Indian, without permission of the governor, under his hand and seal; nor sell, truck, barter, give, or deliver any strong liquor to an Indian, under penalty of forty shillings for one pint, and in proportion for any greater or lesser quantity; except in case of sudden extremity, and then not exceeding two drams.—Chester's "Legal and Judicial History of New York," Vol. I, 158-163.

25. Upon the Peticon of John Matthews desiering to bee admitted as an attorney to this Court, etc.: The Court did admit the Peticonr as an attorney and was sworne accordingly: You doe sware by the Everliving God That you will according to Lawe truely plead & manadge all Cases wherein you shall be employed by yor Clyant that you will not exact in yor fees above what shall be allowed by the Governor & Court. That you will not in one and the same action take fees both of the Plt and deft; That you will not take any apparent unjust Case in hand, but in all Respects behave yor selve as all attorneys are obliged to by the Lawes of this government.—"Records of the Court of Newcastle, 1667."

26. That no high Sheriffe, under Sheriffe, high Constable, petty Constable or Clarke of the Court shall be permitted to plead as an Attorney in any Persons behalfe in the Court where he Officiates, provided always that if any poore person not able to plead his own Case shall request the Court to Assign him the High Sheriffe under Sheriffe, high Constable, petty Constable or Clark to plead for him it shall be Lawful for the Court to grant it; And for the person to plead accordingly. But the person so pleading the poor man's Case is not to give Judgment provided also that any high Sheriffe, under Sheriffe, high Constable or Clark Acting as general Attorneys for any person, absent, out of the Country, and Negotiating their Affaires, and so Lyable to be sued for their Employers such Persons shall have liberty also to plead and prosecute in any Cause that shall any way Concerne their said Employers.—"Duke of Yorke's Laws," p. II.

27. Edmund Cantwell, High Sheriffe, in the behalfe of our Sovereigne Lord, the Kingh. Indytes Justa Andries and Aeltie, his wyfe, for that they the said Justa and Aeltie, not haueing the feare of God before their eyes and forgetting all Civility and the Respect due unto the Court and Justices who so nearly Represent the person of our soueraigne Lord, the King, haue



on the 28th of June Laest past in a most slanderous, absurd, threatening and menacing manner by their ill dirty Language slaundered this Court and their officers, saying God dam the Court they bee all Cheating Rogues. Should I bee tryed by such Rogues as John Moll and a theef and hogh stealer as Gerrit otto they haue Given away a Cowe from mee I am sure to Loose all as Comes to the Court. I will beat and make them fly all to the Devill Iff I come to the Court in Earnest, saying further that hee would an other bout for the Cowe and hee would arrest Robberd Morton again to ye Court, and that then hee would see whether they, meaning the Court, had the hart to give away the Cowe, with a great many more dirty scandalous words and Expressions against the Court and their officers, and on the same day Aeltie, the wyfe of the said Justa Andries, fell Lykewyse a Raling, Cursing and swearing against the Court and their officers in these and the like words:\* God dam that Moll, they are all a Lyke, Cheating Rogues, God dam the Sherrifes & Clarkes. . . .

. . . To wich above said Indytment Justa Andries and aeltie, his wyfe, pleaded not guilty, but after the hereafter menconed witnesses were all sworne and examined in Court: They the said Justa & Aeltie said they would not stand out upon their vindication, but humbly threw themselves upon the mercy of the Court which being taken into Consideration:

The Court (haueing Regard to their submission Doe order an Sentence as followeth That they, the said Justa Andries and Aeltie, his wyfe, doe both upon their knees in Court aske forgiveness for their said offences, and that Justa Andries bee of the good behavior (and give security for the same during the Court's pleasure, and Laestly that they pay a fine of six hundred Guilders and give security for the payment thereof togeher with the Costs.—“Records of the Court of New Castle,” pp. 226-228.

28. Undoubtedly the (Duke of York's) code was designed for the ultimate government of the entire province, but that it would be impossible immediately to bring all its provisions into effect among a people of such widely divergent character as the English and Dutch, who together constituted the bulk of population in the colony, was recognized by the judicious and far-sighted governor. For nearly half a century the Dutch in New Netherland had lived under municipal and judicial institutions derived from their mother country, and these were decidedly different from those to which the English were habituated. The population of New Amsterdam and of the valley of the Hudson was still mostly Dutch, although there had begun an infusion of other nationalities. For the most part, few of these people were in any wise familiar with English customs; as a matter of fact, they could not even understand or converse in the English language. Therefore, it was wholly impracticable to consider at the moment any abrupt substitutions of courts and legal procedure of English character in place of those which had been instituted by the Dutch. With his divided people to rule, the task before Nicolls was indeed one of tremendous difficulties. A wise reserve led him to refrain from interference with the Dutch administration, which he found in efficient operation, and to permit the authorities of the Dutch towns, such as Beverswyck, Rensselaerswyck and Esopus on the upper Hudson, and New Amsterdam and the purely Dutch communities in what afterward became Kings County, to administer their affairs and to distribute justice in their own ways.

So it was that for a considerable period the colony exhibited the anomaly



of working under two legal systems, the Dutch continuing to follow the forms to which they were attached through inheritance from the Fatherland, and through their own local practices of nearly a half century. As the historian of the New York Court of Common Pleas, James Wilton Brooks, has said, the Roman-Dutch system of law which had been brought from Netherland to America by the Dutch pioneers was "a kind of irregular mosaic"; but the same authority considers that "on the whole it was infinitely superior to the more technical and artificial system" to which the English had been accustomed, and which Governor Nicolls now started to impose upon the colony. Upon the civil side, it is doubtful if the Dutch law was much, if at all improved upon by the English substitution. On the other hand, in the treatment of criminal cases the English practices were surely better, although it was long before the people of New Amsterdam, transformed into New Yorkers, became agreeably disposed to the English custom of trial by jury; they preferred and tenaciously clung to their own methods of settlement by arbitration or by the decision of judges.

Many of the Dutch practices continued to adhere with a persistency that fully demonstrated their usefulness, their righteousness. In fact, some of them were, in the course of time, permanently absorbed as a part of the English system. Nicolls carefully refrained from interfering with land ownership as much as possible, and his successors generally followed his example. Laws pertaining to property held under the Dutch land patents were permitted to stand as they were, and, in the course of time, many of these became part of the established laws of the province and the State. Primogeniture, an English custom particularly distinguished from that of Holland, made no headway with the New Yorkers, who rigidly held to the Dutch customs in respect to inheritance. Other traces of the Dutch legal and municipal systems are found in the laws of later periods. Among these are the Dutch methods of making wills by oral declaration before a notary, or by written instructions put in his keeping; the restricted rights of suffrage, which beginning with the time of Stuyvesant lasted for more than a half century and left a permanent influence; the modern district attorney, who is clearly the *schout* of the Dutch period; the practice of raising money for public purposes by excise tax, which was imposed upon the colony by the first Dutch governors; the practice of laying special assessments to provide for local improvements; and other instances showing the influence of the Dutch mind and Dutch practices upon the subsequent law and practices of the colony and State might be cited.

. . . the (Duke of York's) code, as finally shaped and imposed upon the colony was far from being adequate and satisfactory for the purpose for which it was devised. At the first sitting of the newly formed Court of Assizes, in October, following the Convention (1665), more than one hundred amendments were made to it, and in due course these were confirmed by the Duke of York. Other additions and alterations were made from time to time, and with these changes the colony was governed under the provisions of the code and according to its terms until the first provincial assembly was convened by Governor Dongan, in 1683.—Chester's "Legal and Judicial History of New York," Vol. I, 164-168.

29. A parchment copy of this code, certified by Matthew Wren, Secretary of the Duke of York as "concordat cum originale," now faded with

age and indistinct, is in the New York State Library. A copy is in Volume I of patents in the office of the Secretary of State in Albany. It has been reprinted in full in the "Report of the Regents of the University of the Boundaries of the State of New York," 1873, and in "The Colonial Laws of New York," Vol. I, pp. 6-73. When this code was promulgated in March, 1665, copies were sent to the several ridings constituting Yorkshire. The Easthampton copy has been preserved in the office of the town clerk. Another copy was filed in the clerk's office of Hempstead, but when North Hempstead was erected from Hempstead it was filed in Roslyn in the office of the clerk of the former town. It is now owned by the Long Island Historical Society, 1811, Vol. I, p. 305. The amendments to the code are in "The Colonial Laws of New York," Vol. I, pp. 73-79. The "Duke of Yorke's Book of Laws" is the title of a publication by the Commonwealth of Pennsylvania in 1879.







## CHAPTER XIX.

### THE NICOLLS AND LOVELACE ADMINIS- TRATIONS.\*

As might have been expected, the Dutch nation protested strongly against the seizure of its North American province. Late in 1664 the news of the British success in New Netherland, and also against Dutch colonies in Africa, reached England, to be received with open approval at court. Carteret told Pepys that "the king did joy mightily at it," but asked him, laughing, "How shall I do to answer this to the ambassador when he comes?" The answer was "by the insolent claim of priority of ownership," the English ambassador at the Hague also treating the matter with a high hand. The Dutch Grand Pensionary, De Witt, on the other hand, had no intention of taking the affront meekly. He demanded the return of the American province; and he secretly ordered De Ruyter, with his fleet, to retaliate on the English possessions on the Guinea coast. Before the end of the year 1664 the two nations were undoubtedly in a state of war, though

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\*AUTHORITIES—Pepys's "Diary"; Bryant's "History of U. S."; "Documents Relative to the Colonial History of New York"; Valentine's "New York Manual (1852)"; Brodhead's "History of the State of New York"; Mrs. Schuyler van Rensselaer's "History of the City of New York in the Seventeenth Century"; White's "National Cyclopaedia of American Biography"; Josslyn's "Two Voyages to New England" (1672); Denton's "Description of New York," 1670; Werner's "Civil List and Constitutional History of the Colony and State of New York"; "The Historical Magazine"; Chester's "Legal and Judicial History of New York"; Redfield's "English Colonial Polity and Judicial Administration, 1664-1776," "History of Bench and Bar of New York"; Scott's "Courts of the State of New York"; "Courts and Lawyers of Worcester County, Massachusetts"; Washburn's "History of the Judiciary of Massachusetts"; Eastman's "Courts and Lawyers of Pennsylvania"; "Records of the Court at New Castle"; "Records of New Amsterdam"; Trumbull's "History of Connecticut"; "Bartow Genealogy"; Gordon's "History of New Jersey"; Whitehead's "Historical Memoir of Newark," N. J. Hist. Soc. Coll., Vol. VI; Whitehead's "East Jersey Under the Proprietary Government"; "Maverick's Letters in the Winthrop Papers," Mass. Hist. Soc. Coll.



formal declaration was not made until March, 1665. Nicolls was probably aware of this state of affairs early in 1665; surely, he knew of it when Carteret reached New York in June; and it probably had been influencing his plans as to the municipal government of the two principal cities, New York and Albany, both of which were essentially Dutch towns, and as such, by the terms of surrender, should be privileged to continue the Dutch system of burgher government.

Nicolls was so tolerant and honorable in most of the acts of his administration that there seems good reason to believe that he would not have revoked the authority of the burgomasters and schepens had not the two nations drifted into a complete state of war. Certainly, most governments, if so placed, would have acted in their own interests as he did for the English, for when the Dutch naval forces were, if anything, superior to those of the enemy, it would hardly be deemed wise to permit the local government of the two chief fortified places of a British province to remain in Dutch hands, even though the Dutch magistrates of these municipalities had taken the oath of allegiance to the English crown.

But whatever may have been the reason for his action, the inhabitants of New York knew, positively, early in June, 1665, that burgher government must give way to the English system in New York at once, and ultimately everywhere in the province. On June 12, by proclamation, Governor Nicolls made known that, upon mature deliberation and advice, he had found it necessary to "revoke and discharge the fforms and Ceremony of Government of this his Majesties towne of New Yorke under the names, style or styles, of *Schout, Burgomasters & Schepens.*" Accordingly, the municipal court of this character was from that time dissolved, and the officers elected to it in the preceding February thus had to relinquish their authority. "For the future administracon of Justice by the Lawes established in these Territoryes of his Royall High-

nesse, wherein the welfare of all inhabitants and the Preservation of all their due Rights and Privileges Granted by the Articles of this towne upon surrender under his Majesties Obedience are concluded," the governor ordained that "by a particular Commission, such persons shall be authorized to putt the lawes in Execucon in whose abilityes, prudence & good affection to his Majesties Service and ye Peace and happiness of this Government I have especial reason to put Confidence, which persons so constituted and appointed, shall be knowne and called by the Name and Style of Mayor, Aldermen and Sheriffe, according to the Custome of England in other of his Majesties Corporacons." On the same day, by another ordinance, Manhattan Island was to wholly come within the jurisdiction of the municipality of New York, the ordinance reading: "That the inhabitants upon Manhattan Island are and shall be forever counted, nominated and Established as one Body Politique & Corporate under the Government of the Mayor, Aldermen and Sheriffe."

An English sheriff, John Manning, was appointed to the Albany district in 1665, though it does not seem that that city was under mayoral government until 1686, when Peter Schuyler became mayor. But in New York City the conversion to the English municipal system was effected in 1665. In the constitution of the new court the celebrated Mayor's Court of New York City, Governor Nicolls tried to be fair to the Dutch inhabitants as well as reasonably cautious in the interests of the English crown<sup>1</sup>; at least four men of the

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1. . . . when, in June, 1665, Thomas Willetts was appointed mayor, and other Englishmen were put upon the board of aldermen, Nicolls was accused of disregarding the articles of capitulation. Such complaints the Governor met by pointing to his instructions, which required him to conform to English custom in his rule of the province. In the appointment of Englishmen to office his wish was, he declared, to provide for the peace and quiet of the whole community by having in office men of both nations. The discontent was speedily allayed, for no fault could be found with the selection of officers made among the English. The mayor, Willett, especially was greatly esteemed among the Dutch, whom more than once he had served



new court were connected with the old, those appointed to the Mayor's Court being: Thomas Willett, mayor; Thomas Delavell, Oloff Stevenson van Cortlandt, Johannes van Brugh, Cornelis van Ruyven and John Lawrence, aldermen; Allard Anthony, sheriff. Van Cortlandt had been burgomaster of the outgoing court, and Anthony had been its schout. Johannes Nevius, who had been the secretary of the Schepens Court, became the clerk of the new.<sup>2</sup> The formal inauguration of the Mayor's Court, which for one hundred and fifty-six years was destined to be the municipal court of New York City, was observed on June 15, the new magistrates taking their oaths of loyalty to the crown and to the Duke of York and Albany without, of course, having knowledge of the great events which had almost cost the life of the royal proprietor,<sup>3</sup> while giving England the victory in a naval engagement of

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in important trusts in the time of the late governor. Moreover, there could be little real fear of injustice, for the sheriff . . . and the majority of this new board of aldermen were still Dutch.—Bryant's "History of the United States," Vol. II, 329.

2. To the mayor and aldermen, or any four of them, full power and authority were given to rule and govern "according to the general laws of the government and such peculiar laws as are or shall be found convenient and necessary for the good and welfare of the corporation"; and they also had power to appoint officers for the orderly execution of justice.

On June 15, three days after receiving this commission, the mayor and aldermen met at the *Stadt Huys* and organized a court. This became the celebrated Mayor's Court of New York City, which continued under that name for one hundred and fifty-six years, when its jurisdictions were transferred to other tribunals. The mayor's court constituted the Court of Sessions for the city, in the same manner as the justices of the peace of the country towns constituted the sessions courts of the counties. At their first meeting the members of the Mayor's Court chose as their secretary Johannes Nevius, who was the former secretary of the court of *burgomasters* and *schepens*. On June 27th, the court held its first meeting for the hearing and trial of cases. It was directed that the records should be kept in English and in Dutch, and thus, without break, the judicial administration of the affairs of the community went on as before, the difference in name being the only perceptible change.—Chester's "Legal and Judicial History of New York," Vol. I, 172.

3. While Nicolls peacefully debated with the burghers in the *Stadt Huys*, the Duke of York was face to face with the Dutchmen in quite another way, and one that came well-nigh giving to the Governor a new master; for as the Duke, who was in command of the English fleet, stood on the



two hundred ships of war. The first judicial session of the Mayor's Court did not, however, begin until June 27.

There had probably been earlier sessions of the courts of the country towns, but that of June 27 was the first in New York City at which the trial was by jury.<sup>4</sup> Notwithstanding that the Dutch magistrates of the Mayor's Court of 1665 outnumbered the English, and that they were positively against the English system of trial by jury, and while in later years the English system in this respect was not fully accepted by the Dutch of New York, the court records show that the first case of the first day of the Mayor's Court introduced the jury trial, the suit being that of Francis Doughty against John

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deck of his flagship, the "Royal Charles," three of his officers were shot down at his side, so that their blood "flew in the Duke's face."—"Pepys' Diary."

4. All cases were triable by a jury chosen in the following manner: A list of the causes for trial at the next session was given to the clerk of the court, the sheriff or under-sheriff, so that warrants might be issued summoning jurors, usually the overseers of the neighborhood, to hear the different cases. Should a sufficient number not be available, the sheriff was authorized to select able and discreet men "as shall either attend the court upon other occasions, or shall happen to be inhabitants of the towne where the court shall be held."

It was the province of the jury to try the action between party and party, determine the facts of the case, and award damages according to the evidence. When the evidence had been fully submitted and the case tried, the governor and council, or in their absence, the senior justice, pronounced the judgment of the court, and instructed the jury as to the points of law which had arisen during the trial.

The compensation of jurors was three shillings and six pence per day, which were collected from the fees and charges of each court; or if these moneys were insufficient, from the public treasury.

As already stated, the number of jurors was not to exceed seven, nor be less than six, except in capital cases, where it was discretionary with the judge to appoint a jury of twelve. . . .

. . . the verdict of the majority of the jury was final and binding on the minority, who were deprived of any allowance of protest.

On capital cases, where the verdict meant life or death, a unanimous verdict was required. . . .

None were eligible to serve as jurors who were in any way related to the party or parties involved in the litigation; but after being accepted and sworn, a juror could not be challenged. Should a juror presume to reveal the discussions and opinions of dissenting jurors, or other proceedings of the jury, he was subjected to a fine of ten shillings, and further punished as the justices saw fit.—Scott's "Courts of the State of New York," p. 75-77.



Hinxman and Kenelm Winslow.<sup>5</sup> Probably it was through the influence of Mayor Thomas Willett that the court opened with the empanelling of a jury of twelve to try civil causes; also that the magistrates voted "that trials by jury should be on the first Tuesday of every month" thereafter.

When Governor Nicolls had brought the new system of government into full operation in the province, in accordance with instructions from the home authorities, he reported to the Lords of Plantations, of which body Lord Clarendon was the head, answering several queries concerning the affairs of New York. As to the courts and legal procedure observed, Governor Nicolls reported that all causes were tried by juries, and by "no Lawes contrary to the Lawes of England."<sup>6</sup> Yet,

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5. Francis Douthy, pltf. *vs.* John Hinxman and Knollum Winslow, defts. The Court doth Order that the Partyes shall deliver in their Evidence to the following Juries to witt, Caleb Burton, Isaacq Bedloe, Christ hoogland, Balthw de Haery, Wm. dornel, James Bullaine, John Gurland, John Browne, Charles Bridges, John damrel, Thos. Carbet, Saml Edsal.

The Juries doe Judge that the defenders shal pay the plaintiv Soo much as he shall appeare by true accounts due unto him from the Sd defenders, besides the Costsd, Judgment & Nominates for the View, Examine and make up the accounts betwist the partyes from the time that the Bark was Sould to Mr. Tacher till the tyme that she was Returned againe to the sd Douthy to witt, Mr. Jacob Backer, Mr. Isaacq Bedloe, Mr. Balthazar de haert & Mr. Samuel Edsal Ady ut Supra.

Knellum Winslow, pltf. *vs.* Francis Douty, deft. The Court does order the Parties to deliver their Evidence to the before standing juries. The juries doe judge that the defendrs shall pay besides the damages of the Court to the Plaintive the Somme of five and twenty guilders Wampum. The honnble Court doe give their Assent to the foresd Judgement Adt ut Supra.

John Hinxman, pltf. *vs.* Francis Douty, deft. With Consent of both Partyes the Court does Order that they shal deliver their evidence to the jury. The juries judgment is, that the deft. shall pay to the pltf. Soo much as is due to him by Bond besides the Cost & damages of the Court. The Honnourable Court doe give their assent to the aforesaid judgment. Ady ut Supra.

Francis Douty, pltf. *vs.* Knellum Winslow, deft. In Action of Assalt & Batterie the wh The Court orders that the parties shall deliver in their Evidence to the aforesaid Judges. The Juries doe allow the Plaintive for his fine thirty pence besides the damages of the Court. The Honble Court doe give their Assent to the above said allowance. Ady ut Supra.

6. 1st. The Governour and Councill with the High Sheriffe & the Justices of the Peace in the Court of General Assizes have the Supreme



even in the first case tried by jury (*Doughty vs. Hinxman and Winslow*), the record "shows an instance of a compulsory reference of a part of the issues, a common enough procedure under the Dutch rule, but practically unknown in English procedure."<sup>7</sup>

However, during the two years of war, Governor Nicolls held close control of and vigilant watch over the affairs of the province. He tried not to hurt the feelings of the Dutch inhabitants; but the possibility that De Ruyter, with his great Dutch fleet, might suddenly appear in New York waters seemed to be ever before him.<sup>8</sup> However, the apprehended attack never came, and the Dutch and English sections of New York's population did not at any time come into serious controversy in regard to the war in Europe. The English on Long Island during 1666, however, became restive through dissatisfaction with the Duke's laws. To meet the dissatisfaction evidenced at the convention at Hempstead, the governor had tentatively accepted more than one hundred amendments to the Duke of York's code, and in due course, at the first meeting of the Court of Assizes, in October, 1665, these amendments had been recognized, subject, of course, to ultimate confirmation by the Duke. These did not satisfy the

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Power of making, altering and abolishing any Laws in this Government. The County Sessions are held by Justices upon the Bench, Particular Town Courts by a Constable and Eight Overseers, the City Court of N. Yorke by a Mayor and Aldermen. All causes tried by Juries.

7th. All causes are tried by Juries, no Lawes contrary to the Lawes of England. Souldyers only are tryable by a Court Marshall, and none others except in cases of sudden invasion, mutiny or Rebellion, as his Mates, Lieutenants in any of his Countries of England may or ought to exercise.—See "Documents Relative to the Colonial History of the State of New York," O'Callaghan, III, 188.

7. In Valentine's "New York Manual for 1852" will be found several extracts from the records of the first Mayor's Court of New York.

8. The immediate effect of the declaration of war upon that province was to compel Nicolls to take all possible measures for its defence, lest De Ruyter should come that way on his mission to "inflict . . . as much damage and injury as possible" upon the English.—"Dutch Document," cited by Brodhead, Vol. II, 58.



Long Islanders, and some stern examples had to be made of the most intractable offenders, while extending indulgence to others. This trouble had scarcely ended before the government had to deal with another arising out of the reluctance of land owners to comply with the requirements of the government, that they renew their patents, a formality which would enable the proprietary government to exact certain fees and insert the objectionable quit-rent clause. However, the enforcement of the law as to land patents had been decided upon by the Court of Assizes in September, 1666, and the inhabitants, after much discontent, yielded.

These troubles were before the provincial government in 1666; but they were not by any means the only perplexities that came to Governor Nicolls in that year. France had joined Holland in warring against England, and King Charles had instructed the American governors to begin what hostile measures were possible against Canada, the seat of France in North America. But the English colonists were reluctant to act, even though the French came, in armed force, to within a short distance of Albany. Therefore, Governor Nicolls tactfully accepted the affirmation of the French that they were warring only against the Mohawk Indians, and he actually aided the French commander, Tracy, in negotiating a treaty of peace with the Mohawks. By these able diplomatic moves he contrived to get the French to leave New York territory without conflict between the two white nations.

In 1667 (July), the peace treaty signed at Breda between England and Holland confirmed England in the possession of the former New Netherland. At the same time, by another treaty with France England lost Acadia. Massachusetts viewed the latter French advantage with apprehension, for it brought the frontiers of New France so much nearer New England; but when the peace of Breda was proclaimed in New York, on New Year's Day of 1668, there was general rejoicing in the province—at least among the English, though

there must have been many of the Dutch inhabitants who had been praying that the success of Dutch arms in the war would end English rule of the former New Netherland.

However, the Dutch colonists, as a whole, were somewhat apathetic in the matter, for they recognized that Nicolls had judiciously governed the province that had been so misgoverned by the earlier governors of their own nationality. True, he had not given them representative government, but the English were more discontented without it than they were. Therefore, when, at the end of August, 1668, Nicolls departed, having relinquished the governorship to Colonel Francis Lovelace, who had arrived in February, he was tendered good evidence that his administration had been appreciated. "The freemen of New York mustered under arms and in military order at the lower part of the town, to bid a ceremonious as well as a heartfelt farewell to the governor who had ruled them so justly that he had left no enemies behind." His fellow commissioner, Maverick, wrote of Nicolls, that he had served in the province "with great reputation and honor; had done "His Majesty and his Royal Highness very considerable service in these parts," having, "by his prudent management of affairs, kept persons of different judgments and of diverse nations in peace and quietness during a time when a great part of the world was in warrs." Nicolls had also brought the "several nations of Indians . . . into such a peaceable posture and faire correspondence" as had never been known before.

On August 28, ex-Governor Nicolls sailed, bearing an address from the freeman of New York to the Duke of York, "setting forth his good service and the peacefulness of the province." He left behind "a name which stands preëminent among the royal governors in America for moderation, justice and wise forbearance." In his four years as governor "he accomplished a work far in advance of anything that had ever been achieved by any of his predecessors," and had



“placed the colony upon a sound foundation” and had “proved himself to be a remarkable man of affairs, farsighted and statesmanlike, tactful and generous in his dealings with the people over whom he had been placed, but at the same time unswerving and determined in whatsoever he believed to be the best interests of the community. His praises have been sounded by every historian of New York.” Mrs. Van Rensselaer very descriptively writes of the qualities, ability and achievements of the first English governor of the former Dutch province<sup>9</sup>; and her opinion of him perhaps agrees with that of the average Dutch colonist of Nicolls’ day. As has been stated, Nicolls was recalled at his own request; and his recall “was accompanied with kind and flattering words from the king and the king’s ministers.”

Sir Richard Nicolls, for he attained knightly rank, was born at Ampthill, Bedfordshire, in 1624. He was pursuing his university course at the time Cromwell’s opposition to King Charles I divided the people into Royalists and Round-

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9. In New York his tact, his good temper and his impartiality had never failed. Many old matters, Van Ruyven wrote to Stuyvesant in Holland, had been “ripped up and misinterpreted,” but the governor “wisely disregarded them.” He well knew, as he wrote to his commissaries in Albany when urging them so to behave that the Dutch and English might “live as brothers,” that to pay heed to “strange news” and gossip “commonly tends to the dividing of men’s minds.” With his soldiers he was so strict that they provoked only one small riot on Manhattan. When the Dutchmen at Esopus broke into open revolt, exasperated by the behavior of the garrison and the harshness of Captain Brodhead, who failed to follow the governor’s good advice. Nicolls did indeed banish the ringleaders, but he also suspended Brodhead. His sympathy with the Dutch, and his confidence in their good intentions he showed in acts as well as words, notably in many appointments to office, including the appointment of Van Ruyven to the responsible post of Collector of Customs, as Delavall’s successor. He did what he said he wanted to do—he won the affections of the people confided in such difficult circumstances to his care; yet in accomplishing this he shirked no responsibility, shunned nothing that his duty to the Duke or his own estimate of the needs of the province demanded, and ventured to break promises that had been given before he fully understood either local conditions or his master’s desires. In all phases of his complicated work he stood virtually alone, with few to advise him, none to share responsibility with him. Nevertheless, his correspondence shows that he quickly learned to comprehend colonial problems even in their broader aspects, except only



heads. Nicolls, although only eighteen years old, was given command of a troop of horse of the Royalist forces; and with the Stuarts he escaped to the continent. In exile, he was attached to the service of the Duke of York, fighting by his side in the Continental wars. He returned to England at the Restoration, and became a member of the Duke's household. In 1664, he headed a commission to the American colonies, being especially entrusted with the winning of New Netherland. His success in this trust has already been stated. After his return to England in 1668, he lived in retirement upon his Ampthill estate for a while, his purse being but slender and having become sadly depleted by his four years of underpaid service as governor. On several occasions, it appears, he had contributed from his own means to meet the demands upon the "depleted provincial exchequer," and to maintain the governorship in proper vice-regal dignity. But when war broke out in 1672, Colonel Nicolls was again given a place at the side of the Duke of York, Admiral of the Fleet. On May 28, 1672, Nicolls took part in the great naval battle between the Dutch and English fleets, the former under De Ruyter and the latter in command of the Duke of York and Marshal d'Estress. It was the ex-governor's last battle, the gallant colonel being killed in that engagement in Southwold Bay. He had never married, and had given his life wholly in loyal service to the royal house of Stuart—most capable service ill requited—at least, by a monetary standard. Like many of his class of that day, Sir Richard Nicolls was of scholarly attainments, especially learned in classics, being

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the supreme importance of the friendship of the Iroquois. In his official as in his private capacity, this first English governor of the Dutch province seems to have been a man in ten thousand. Certainly among those who followed him in office, only three or four deserved to be compared with him for ability, diligence or integrity; scarcely one showed so kindly a feeling for the people he governed; and not one continued, as did Colonel Nicolls, to bear their interests in mind and to labor for their good after he left their shores.—Mrs. Schuyler van Rensselaer, in "History of the City of New York in the Seventeenth Century," II, p. 64.



“well versed in Latin and several European languages.” He spoke Dutch fluently, which accomplishment enabled him to more clearly grasp the Dutch situation in New York. “Quick to see the future greatness of New York, he was the first to point out the rare advantage of its situation.”<sup>10</sup>

Francis Lovelace, second son of the first Baron Lovelace, was the next governor of New York; but in his administration of five years he failed to show capability for the trust like that of his predecessor. His character was not especially strong; he had little initiative, and was more inclined to follow lines of least resistance. But good lines had been laid by Nicolls, and Lovelace held the province fairly well on these lines of progress.

New York City was rapidly increasing in commercial importance, so much so, indeed, that “the brethren of Boston were very sensible” of the fact. “His Majesty’s City of New York” in 1670 covered that part of Manhattan Island which lies below the present Wall Street. In its very name, Wall Street commemorates the line of palisades which formed the northern limit of the town proper. Below the wall were the more permanent structures, the residences of the wealthier citizens and the business houses. Beyond the palisades were the hamlets and farms of the poorer colonists. In 1672, there were about four hundred buildings below the wall, “the meanest house therein,” stated a visitor at that time, “being valued at one hundred pounds”<sup>11</sup> They were solidly constructed, “much after the manner of Holland,” being built “with Dutch brick *alla-moderna*,” “covered with red and black tile,” with their gable ends facing the streets after the vogue of the Fatherland. A gateway in the palisade led from the *Heere Straat* below the wall to the *Heere Wagh* beyond, both making the lower end of the highway now known as Broadway. Along the *Heere Wagh* toward the upper end of

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10. White’s “National Cyclopaedia of American Biography,” XIII, 448.

11. Josslyn’s “Two Voyages to New England” (1672).

the island the dwelling houses and farms (bouweries) stood, close together for a little distance beyond the wall. The Heere Wagh, however, soon passed into the thickly wooded and sparsely populated part of Manhattan Island. The "Flats," or "Common" covered the site of the present city hall; after which came farms, and then the "Great Bouwerie," from which the present Bowery takes its name. In it Petrus Stuyvesant lived, and in it in that year it is said he, the most famous of the Dutch governors of New Netherland, died. The governor's house probably stood near Tenth Street of modern New York, a little eastward of Third Avenue. Beyond it, over the rest of Manhattan, were swamps, woods, clearings and outlying plantations to New Haarlem, a little village at the junction of Harlem and East Rivers.<sup>12</sup>

One of the most important acts of the Lovelace administration was the opening of the highway between New York and Harlem, as part of a post road between New York and

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12. To complete the picture of New York province in 1670-72, it might be stated that from the Westchester villages along the Sound, the people always reached New York by water, risking the "terrible perils of Hell-Gate," the whirlpool of which "continually sends forth a hideous roaring, enough to affright any stranger from passing any further"; "yet a place of great defence against any enemy coming in that way, which a small Fortification would absolutely prevent, and necessitate them to come in at the west end of Long Island by Sandy Hook, where Nutten Island doth force them within command of the Fort at New York, which is one of the best Pieces of Defence in the North parts of America."—See Denton's "Description of New York, 1670."

With the nearest part of Long Island the communication was by a ferry near the Peck Slip of two centuries later. There such passengers as would cross might summon the ferryman by blowing a horn that hung to a neighboring tree. The ferryman's boat carried its passengers to Brueckelen, described as a village with "a small and ugly church standing in the middle of the road"; whence the traveller might turn to the right to go to Gouanes (Gowanus), to Vlacke Bos (Flatbush), to Rust-dorp (Jamaica), Heemsteede, and the hamlets and farms beyond.

Along the bank of the Hudson and kept in communication with the capital by the little shallops of the settlers, or the larger vessels of the fur traders, were scattered farms and little settlements; while Esopus, Rensselaerswyck and Albany were garrisoned places. To the northwest of Albany, on the beautiful Mohawk, lay the outpost of civilization, the hamlet of Schaenhechtede (Schenectady), which was then in its first decade.



Boston. But there was little else that disturbed the placidity of New York City life in those years. In general, the Dutch and English lived amicably together, some of the leaders on both sides, indeed, being especially painstaking in their efforts in this respect.<sup>13</sup> But there were many, in other towns, who could not take kindly to Governor Lovelace, or to each other. Some of the Dutch in New York province became so discontented that they left their holdings and migrated to the Ashley River colony in South Carolina in 1670. There was unrest on the northern frontier in 1670, the Dutch and English clashing at Albany. The English, apparently, were asserting their authority somewhat roughly. At least the commissioners sent to Albany to investigate in the spring of 1670 found that the provocation lay with the English commander at Albany, Captain Baker, who at their suggestion was dismissed.

But there was more serious discontent on Long Island, among the English. Indeed, they reached such a rebellious inclination that the governor ordered their town votes to be publicly burned in the spring of 1670 in retaliation for their refusal to contribute money to renew the fortifications at New York.<sup>14</sup> There was also some apprehension on the frontier as

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13. "There is good correspondence kept between the English and Dutch," wrote Commissioner Samuel Maverick in 1669, "and to keep it the closer sixteen (ten Dutch and six Englishmen) have had a constant meeting at each other's houses in turns, twice every week in winter, and . . . in summer once. They meet at six at night and part at about eight or nine."

14. The new Governor, in 1669, directed the Court of Sessions to provide the means necessary to repair the palisades at New York. The towns refused to pay the taxes levied, because they were denied the privileges conceded in New England, the liberties due all Englishmen, the right that under the British Constitution no taxes could be levied except by their own representatives. The Court, sitting at Gravesend, characterized the resolves of the several towns as "false, scandalous, illegal and seditious"; the Governor and Council expressed similar sentiments and ordered the papers to be burned and the principal promoter prosecuted. The Great Charter forced from King John by the barons had provided that, with the exception of the customary feudal aids, "no scutage or aid shall be imposed in our realm save by the Common Council of the realm." Even these grants

to the increasing activity of the French, although, as Governor Lovelace said, to reassure the people of Albany, "it was very improbable that when there was no war in Europe, Courcelles would begin one in America."

However, they had not long to wait, although when war did come, in 1672, France, by one of the tortuous undercurrents of international politics which are only chartable along the ever-shifting river bed of self-interest, was found to be at the side of England, her adversary of 1666-67. England, for self interest, was allied to the great Catholic power, France, against a nation of her own faith, Holland; all of which is not surprising, like associations having functioned earlier, just as in later centuries Christian nations have allied with Mohammedan, to fight other Christian peoples. And Governor Lovelace was destined to find eventually that individuals could be just as inconsistent as nations. In the heat of the moment, when checked in his governmental measures by a demand for greater liberty for the people, who wanted to be represented in deliberations that affected their own purses, Governor Lovelace is said to have instructed his Council to "lay such taxes as may give them liberty for no thought but how to discharge them." It would, therefore, not be beyond

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made in the Great Council were binding only on the barons and prelates who made them; and before the aid of the boroughs, the church or the shire could reach the royal treasury, a separate negotiation had to be conducted with the reeves of each town, the archdeacons of each diocese, and the sheriff and shire court of each county. Lovelace undertook to force the collection of taxes through this latter channel. It was with reluctance that the people of England abandoned the system under Edward, and accepted representation in Parliament instead. But Englishmen had grown wiser since, and no freeman would now relinquish the right. Hence the irrepressible conflict proceeded. The feeling in New York was intensified by the granting of a General Assembly to New Jersey, with the right of freedom of taxation except by its consent. The first assembly met in 1668.—Werner, in "New York Civil List," 1889 edition, pp. 47 and 48.

In all probability the Long Island voters were strengthened in their resistance by the happenings of that year in New Jersey, where the settlers positively refused to pay or recognize quit-rents. They claimed the Indian title as paramount.



credence to suppose that the Englishman who told the Dutch commanders in 1673 (when cruising northward from Virginia and in dire need of wood and water) "that New York was incapable of defence" was one of the disgruntled Long Islanders who could not be brought to coöperate with a governor who had refused to coöperate with them. And the Dutch commander thinking in terms of selfishness, can hardly be blamed for giving more credence to the statement of another English prisoner, who declared that "there were a hundred and fifty guns mounted at the fort, and that five thousand men could be mustered in three hours."

Quite possibly several thousand men might have been mustered in the English province had they been well governed and consequently satisfied with the existing order. But arbitrary rule engendered only apathetic interest in the governed for the governors. Hence it happened that when on August 7, 1673, twenty-three Dutch ships of war anchored in the outer bay of New York, just below Staten Island, "rather afraid of receiving some disturbance from New Yorke than giving any to it,"<sup>15</sup> but so badly in need of water that the Dutch commander had decided to risk such disturbance, there were townsmen sufficiently dissatisfied with English rule to gladly go out of their normal way to acquaint the Dutch commander with the true state of the New York defences, stating that the fort was garrisoned by only seventy or eighty men; that the guns were either dismounted or their carriages rotten; that the governor was absent and no efficient commander was in his place; and that, most vital of all, the people generally were discontented with English rule. While it is true that the English inhabitants did not actually rally to the side of the Dutch, it is equally true that by their inactivity and apathy they made the capture of the fort by the Dutch captains easy. Had the promise made by Governor Nicolls in

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15. Letter of Richard Wharton, in "Hist. Mag.," 2nd series, Vol I, p. 297.

1664 been met, had the English people been given proper representative government they would have met the tax demands to put the New York defences in proper state of repair. Had they been part of the government, they would have constituted in themselves strong and loyal militia units, strongly patriotic and ready at call to uphold their king and defend their province. But when Manning (who had hastened back to Fort James, to take command and endeavor to hold the Dutch in check while the militia captains of the towns hastened with their companies to New York) sent his drummers through New York calling for volunteers, he had regretfully to recognize that "the drums stirred no martial ardor in the breasts of the citizens,"<sup>16</sup> also that no militia units came from the towns. As a matter of fact, very few of the militia captains responded to the summons from Manning, and they had no commands, for the militiamen refused to rally. So the first period of English rule in New York may be deemed to have ended through failure of the proprietary government to

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16. Manning, meanwhile, was not idle. Messengers were hurried off to recall Lovelace; orders were issued to the military captains of the towns to hasten to New York with their companies; the drums were beaten through the streets for volunteers; the smith was set to work to repair the arms; the commissary was sent out to gather provisions to victual the fort in case of siege; and, to gain time, a deputation was despatched to the fleet, to demand the meaning of the approach of this hostile force. Manning . . . was not a coward, and no doubt he did all that any man could do under the circumstances in discharge of his duty. But his efforts were in vain; there was not time for the Governor to get back from Connecticut; the militia of the country towns refused to rally, even where—as was the case in only two or three instances—their captains responded to the summons from Manning, the drums stirred no martial ardor in the breasts of the citizens; the labors of a single smith on firelocks could avail but little in a fort where nobody would come to use them, where six only of the large guns were on platforms, and to the whole there were but four sponges and four ladles. Even his attempt to save time by sending a flag to the fleet probably only betrayed weakness and fear to the enemy. The next day their guns were frowning upon Fort James from as many ships as the stream in front could conveniently float.

To the repeated demand for surrender Manning could only ask a little more time. The Dutch commanders would give at least but thirty minutes, and turned over an hour-glass to mark the time. As the last sand ran out they opened fire, and some in the fort were killed and some wounded. Any



give the people the rights to which they, as free-born Englishmen, were entitled.

Thus ignominiously ended the Lovelace administration. But he suffered even greater indignity than to be thus summarily dispossessed of his high office. Somewhat indiscreetly he ventured back to New York City a few days after the entry of the Dutch. The military commanders had attached his and Manning's residences and visible estates deeming them to be public property. But they did not make the ex-governor a prisoner when he returned; they treated him kindly. Which is more than can be recorded of the civil authorities, for within three days of his return, he was arrested for debt. Thereafter, until the departure of the Dutch naval commanders, Lovelace was virtually under arrest; and one of the last acts of the Dutch naval council was to confiscate all the public property they had formerly attached. Thus the former governor was stripped of his last guilder; and he found his lot harder to bear when quietly told that if he would now pay what he owed, he would in six weeks be permitted freely to leave the country. Fortunately he was not detained long. He returned to England a disappointed man, perhaps considering himself as one whose career had been wrecked by a mere chance turn of the wheel of fortune. Had the Dutch commanders not needed water, Lovelace may have soliloquized, he would still have been governor. It may not have occurred to him that had his administration been congenial to the taxpayers of the province they could have stopped the Dutch from unseating him. However, in this failure to pro-

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defence. of course, was utterly hopeless, though the fire seems to have been returned; but at the same time a force of six hundred Dutch landed on the banks of the Hudson in the rear of Trinity Church in Broadway and moved to the assault. There was nothing left but immediate capitulation. Just as the sun went down the Dutch troops marched into the fort out which Stuyvesant had stumped nine years before at the head of his men. How happy would he have been could he have lived to see that sight!—Bryant's "History of the United States," Vol. II, 348.

vide good government, his royal master was more to blame than he, for while he, as deputy governor, had authority, with his Council, to frame laws for the government of the province, such laws had to conform with the general scheme of proprietary government; and this scheme did not provide or propose any genuine form of popular government. As a matter of fact, Governor Lovelace had less scope than his predecessor, Colonel Nicolls, for the plan of government had already been so completely laid that when he was sent to relieve Nicolls in 1668 he was given a confirmation by the Duke of York of the code of laws promulgated at Hempstead, and subsequently amended by the Court of Assizes created by Nicolls, but was expressly admonished "to make no alterations in the laws of the governor settled before his arrival." So, one might argue that Lovelace was the victim of unfortunate but unavoidable circumstances. Nevertheless, a man of more initiative and stronger character would have found a way to repair the dilapidated defences; a man of greater foresight and keener judgment would not have characterized as merely "one of Manning's larrums," his lieutenant's urgent appeal to him to hasten back to New York because of the rumor that had just reached the city that a Dutch fleet was on its way northward from the West Indies. Generally, the men who succeed do so by anticipating and guarding against the misfortunes other men of hazier vision would fail to see in time.

Of the public acts of the five years of governorship by Colonel Lovelace there is little of importance to record. In 1670 he extinguished fully the Indian title to Staten Island. This, and the post road from New York to New Haarlem, were the only outstanding events, though it must be admitted that the province progressed steadily during his period as governor, for he did not, in general, commit any flagrant acts of oppression that would retard its normal progress. Governor Lovelace had a few able councillors. In the first years



his Council consisted of four members, including Matthias Nicolls, the provincial secretary, Cornelis Steenwyck, mayor of New York City, and Thomas Willetts, former mayor. Others who were members of Governor Lovelace's Council at some time during the five years were Thomas Delavell, Ralph Whitfield, Isaac Bedloe, Francis Boone, Cornelis van Ruyven, Captain John Manning, Dudley Lovelace and Thomas Lovelace. The two last named were younger brothers of the governor.

The courts functioned, no doubt, much as they had during the Nicolls régime. Once each year, in all probability, the Court of Assizes held a session, attended by justices of the peace as well as by the members of the Provincial Council, this court thus seeming to have in it an element of popular government, though in fact it had no authority independent of the governor, at least not in legislative matters.<sup>17</sup> And the county courts, the Courts of Sessions functioned in the ridings of Yorkshire, at regular intervals, minor cases coming, as planned by the Duke's laws, into the town courts, or the Mayor's Court of New York.

Briefly reviewing the legal history of the first English period in New York, it appears that the first session of the Court of Assizes was presided over by Governor Nicolls, a jury of seven trying the first case, John Richbell *vs.* the Town of Huntington, on September 28, 1665. John Rider was attorney for the plaintiff and "Mr. Leveredge" for the defendants. In this the first case the jury found for the defendants; but the "Court having heard the case debated at large" demurred, and, after examining "further into the equity of the cause and upon mature and serious consideration, do find"

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17. The governor and his council remained the real lawmakers as well as the interpreters of the laws they made. . . . the court of assize was the most convenient place for the publication of any new laws . . . (but) in establishing that court the Duke's deputy did not concede any political advantages to the people. All its officers were his own subordinates; none of them his colleagues.—Brodhead's "History of the State of New York.



the plaintiff to be the rightful owner of the parcel of land in dispute. "And all persons are hereby required to forbear giving the said pl't or his assigns any molestation in the peaceable and quiet enjoyment of the premises."

Another interesting case heard at the first session of the Court of Assizes was a charge of witchcraft against Ralph Hall and his wife, Mary Hall, of Seatallcott, Long Island.<sup>18</sup> The jury found "nothing considerable" to charge the man with, but they had "some suspitions" of the wife, though not sufficient "to take away her life."<sup>19</sup> The court thereupon bound the accused to be of good behaviour as long as they remained in the province, and to appear at every session of the court. Just before leaving for England in 1668, Governor Nicolls released these suspects from their recognizance.<sup>20</sup> It should be pointed out that in this trial the accused were not arraigned for witchcraft, but for murder. As a matter of

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18. "by some detestable and wicked acts commonly called witchcraft and sorcery did (as is suspected) maliciously practice and exercise at the said town of Seatallcott (Brookhaven) &c. on the person of George Wood, late of that place, by which wicked and detestable arts, the said George Wood (as is suspected) most dangerously and mortally sickened and languished and not long after, by the aforesaid wicked and detestable arts, the said George Wood (as is likewise suspected) died."

19. The case was tried before a jury composed of Thomas Baker, of East Hampton, foreman; Captain John Symonds, of Hempstead; Mr. Hallett and Anthony Waters, of Jamaica; Mr. Nicolls, of Stamford; Balthazar de Haart, John Garland, Jacob Leisler, Antonio de Mill, Alexander munro and Thomas Searle, of New York. They found as follows:

"Wee have seriously considered the Case committed to our Charge against ye Prisoners at the Barr, and having well weighed ye Evidence wee finde that there are some suspitions, by the Evidence, of what the woman is Charged with, but nothing considerable of value, to take away her life. But in reference to the man wee find nothing considerable to charge him with."

20. These are to certify to all whom it may concern that Ralph Hall and Mary, his wife, (at present living upon Miniford's Island) are hereby released and acquitted from any and all recognizances, bonds of appearance, or other obligations entered into by them or either of them, for the peace of good behaviour, upon account of any accusation or indictment of withcraft, brought into the Court of Assizes against them in the year 1665; there having been no direct proofs nor further prosecution of them since.—O'Callaghan's "Documentary History of the State of New York," Vol. IV, 85, 86.



fact, witchcraft was not among the capital offences of the Duke of York's code; and both Nicolls and Lovelace dealt tolerantly with such cases. The case of one Katherine Harrison, widow, of Westchester, "reputed to be a person lyeing under ye Supposicon of witchcraft," coming before the court in 1670, because she had not heeded an earlier order to remove from the town, brought her a release from such order. The court found nothing against her "deserving the continuance of that obligacon" and therefore gave her "Liberty to remaine in the Towne of Westchester where shee now resides or any where else in the Governmt during her pleasure." The province of New York was evidently not so intolerant as other English colonies in matters of religion, Possibly the inhabitants were not, in general, as sternly religious as the average New Englander. There is good evidence that they were not. Certainly, the New York judiciary of the first years of the English period were not so benightedly superstitious as the Salem Witchcraft trials of a generation later showed a Massachusetts judiciary to be.<sup>21</sup>

One New York historian infers that the Court of Assizes, if erected, had little power, stating that the "governor would pronounce his verdict," in the manner of edicts to "be executed by the sheriffs whom he had appointed for that purpose."<sup>22</sup>

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21. This was twenty-three years before the witchcraft superstition became deadly in Massachusetts; it did not become epidemic in Salem village until 1691-92, when a special court to try the witches was created, whose sanguinary proceedings have left a lasting stain upon the Puritan judiciary of Massachusetts. That an accusation of witchcraft should have been made in New York in 1665 does not excite special wonder, for a belief in its possibility was universal at that period, and, being as was supposed founded on Scripture, was likely to be fostered by the clergy. We do not know the contents of the depositions on which Hall and his wife were indicted and tried, but it is evident that the trial was conducted with a decent regard for truth, and with a judicial sobriety which contrasts forcibly with the blood-thirsty and law-defying proceedings of the Massachusetts judiciary, in whom reason and every humane feeling seem to have been completely overwhelmed in that brief period of nervous exaltation.—Redfield, in "History of the Bench and Bar of New York," Vol. I, 54.

22. Relative to the Court of Assize, William Smith, the historian, claims in his "History of New York" that Nicolls, the first governor of the prov-



But there can be no doubt that the Bench of the Court of Assizes, at its annual sessions actually did hold judicial authority, independent of the governor. Its regular session lasted for some days, perhaps a week, and while Governor Nicolls presided on the first day of the first term, it is also recorded that the first case was tried "before a full bench." There were times during the year when the governor would be called upon "to hear motions in causes of one kind or another not admitting of delay"; and this might have led to the belief that a properly constituted supreme court did not exist under the first English governors. As a matter of fact, Nicolls interfered with the courts less than Lovelace. An order issued by the latter in 1669 may be instanced. It appears that Captain John Carr (the governor's deputy on the Delaware) had laid an attachment upon some debts there due to John Garland, of New York, by Isaack Bedlow, which the latter had paid over to Carr. The governor's order, which is addressed to "William Torn, as Attorney to Mr. John Garland," authorizes the former to "forewarn him the said Captain Carr from intermeddling any more in that matter." The governor also gave John Garland liberty to recover "all those debts in

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ince, erected no courts of justice, but took upon himself the sole decision of any disputes. Complaints were brought before him on petition by the parties, to whom one day's time was given in which to prepare for hearing. After a summary hearing of the facts involved, the governor would pronounce his verdict.

His decisions were designated "edicts," and in them was a direction that they be executed by the sheriffs whom he had appointed for that purpose.

We are informed by the same authority that during the governorship of Lovelace, he did not wholly follow his predecessor's example, but called to his assistance several of the justices of the peace, to aid him in administering justice, and the entire tribunal was known as the Court of Assize.

Judge Charles P. Daly, in his "History of the Court of Common Pleas," takes issue with Smith on this point, and claims that there is no authentic foundation for such a statement, except that appeals from the Court of Assize came directly before the governor in the form of petitions.

Judge Daly assures us that the records of the Court of Assize, still extant, show that the court was convened at New York by Nicolls on September 26, 1665; it is therein stated that the first cause tried before it was a trial by jury.—Scott's "Courts of the State of New York," p. 88.



the same specie agreed on."<sup>23</sup> Another instance shows the summary manner in which Governor Lovelace vacated an attachment.<sup>24</sup>

Associated with the functioning of the superior courts of the Nicolls-Lovelace period, and in fact next in prominence to the governors, was Mathias Nicolls. He was, it would seem, in all executive, legislative and judicial matters the mainstay of Governor Nicolls. In his capacity as secretary of the province, he was also *ex officio* clerk of the Court of Assizes, as well as a member of the Council. The earlier court records are in his "clerkly handwriting." "By virtue of his office, he was entitled to sit in Courts of Sessions in the several ridings, and frequently did so in Queens County, where he was a large land owner." He was mayor of New York in 1672, was Speaker of Dongan's Assembly of 1683, and was on a commission of Oyer and Terminer the same year. "He was a barrister of Lincoln's Inn, a man of character and capacity and was highly esteemed." In view of his professional standing in England, of his admittance to practice by Lin-

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23. "And the said John Garland hath hereby liberty by himself or his attorney to ask, demand, sue for, recover and receive all those debts in the same specie agreed on and according to the contract made with the respective debtors. And if it shall appear that the said Carr hath received any part of the same in any other pay, he is to make it good to Mr. Garland or the debtors are to make payment of it against the said John Garland or his order having paid the former in their own wrong. Given, etc., 5th day of August, 1669."

24. One Arthur Strangeways was a carpenter engaged in building a house at Newtown for one Ralph Hunt, but the Governor required him to work upon a ship he himself was building; whereupon he left Mr. Hunt's employment. Hunt at once got out an attachment against the carpenter for breach of covenant and levied upon certain moneys owing to him by Arthur Hotchman and one John Smith; which, coming to the knowledge of the Governor, brought an order from the latter, on August 6, 1669, addressed to the Justice of the Peace, Constable and Overseers at Newtown, commanding them (inasmuch as Carpenter Strangeways had been hindered in his contract to build Hunt's house "upon the account of working as a carpenter at my ship, which is a public employment, tending to the good of the country in general") "to cause the said attachment to be taken off from both the said sums, the said Arthur Strangeways being free from any other private engagement of work as long as he is employed by me."

coln's Inn as a barrister, it would not be surprising if the statement that he was the real author of the Duke of York's Laws were true. Surely no other practicing New York lawyer of that time had such high credentials as Secretary Nicolls; and in the fact that he comes prominently into the governments of the first four English governors of New York—Nicolls, Lovelace, Andros and Dongan—it would seem that his place in the legal structure was generally recognized. He lived in the province until death, his end coming in 1690 it is believed.

Among the other early lawyers of the English period was one whose surname is a familiar one in legal records of early republican times in New York City. John Rider, who was the prosecuting attorney in the first cause tried by jury before the Court of Assizes in 1665, became the first clerk of courts of Westchester in 1684, under the Dongan system. Other attorneys who come into the records of the Court of Assizes include John Sharpe, Thomas Owen, Mr. Leveridge, Nicholas Bayard and Mr. Bogardus. There were many other attorneys who practiced in the inferior courts—not all of them learned in the law, it would seem. There were no particular requirements for admittance to practice, save that the petitioning attorney should take oath not to exact fees "above what shall be allowed by the Governor and Court," and also promise not to take fees from both the plaintiff and the defendant of the same action. There was one other requirement, in 1667—that the sworn attorney pay the court crier therefor. Thus, many who came into the records as *attorneys* were in reality men of business affairs who entered the courts to plead perhaps only one case—that of a neighbor, or one of which the pleader had especial knowledge.<sup>25</sup> In 1677, the Governor and

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25. Other names appear in the records of the Mayor's Court. It does not follow that any of these were bred to the law, or made its practice an exclusive employment. They were traders, factors for foreign merchants, land speculators, or, it may be, mechanics who, possessing a recognized



Council, in New York, resolved that "pleading attorneys be no longer allowed to practice in the government (province) but for the depending causes." Nevertheless, the status of an attorney in New York at that time was probably higher than that of their professional brethren in Massachusetts. In the earliest courts of Massachusetts, the professional lawyer was unknown; the accused had to defend himself, unless a magistrate felt disposed to take up his cause without remuneration. The earliest lawyers could do no more than argue the case before the court and jury under the Massachusetts system; cross-examination was not permitted, and long arguments were frowned upon; indeed, in 1656 a law was passed "fining a lawyer twenty shillings an hour for such time beyond one hour that he might take in his plea." The profession was in such disfavor in 1663 that the General Court of Massachusetts then ordered "that no usual and common attorney in any Inferior Court should be admitted to sit as Deputy in this Court."<sup>26</sup> Hence, though the lot of the early lawyer was somewhat hard in New York, that of his confrere in Massachusetts was harder. The common feeling in both provinces seemed to be that lawyers as a class were to be shunned; that the professional lawyer was just as likely to attach the purses of his clients as to win their cases. With this in mind, perhaps, the Nicolls' Code "provided for the punishment of common barrators" by fine or imprisonment, if proved to be "vexing others with unjust, frequent and endless lawsuits." Probably the real meaning of the word *barrator* was intended, though possibly the provision was designed to

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talent for managing affairs, or for penmanship, or an easy volubility, were likely to be called on by their neighbors to act as conveyancers, attorneys, or advocates, as the matter in hand might require.

There does not appear, however, to have been in New York such a popular prejudice against lawyers, as a class, as was notoriously the case in some of the other colonies, particularly in Massachusetts Bay.—"History of the Bench and Bar of New York," I, 54.

26. "Courts and Lawyers of Worcester County, Mass.," Vol. I, 344, "History of Worcester County, Mass.," 1924.

include *barristers*, for it seems quite possible that the legal profession in New York at that time was graded somewhat after the Massachusetts plan, which accorded the more dignified title of *barrister* to the professional lawyers who practiced in the higher courts, and restricted mere *attorneys* in their practice to the inferior courts.

The Court of Assizes and the Courts of Sessions of the ridings were probably the fields in which the professional lawyers fought most of their fights. While the justices of the Courts of Sessions did not go from the court of one riding to that of another, the lawyers may have been expected to "ride the circuit" with the high sheriff, for the Duke's laws, in providing for a Court of Sessions in each of the three ridings, took care that the three courts should not sit on the same dates. At first there were to be three sessions in a year,<sup>26a</sup> and as the sessions "were not to exceed three days in duration" and came in the first, second and third weeks of March, June and December, the lawyers could practice in the three courts without difficulty, as well as in the annual Court of Assizes in October.

Probably, also, the leading lawyers practiced to some extent in the New York City Mayor's Court, which was quite important, with many cases to try at its weekly sessions. Thomas Willett, as Mayor of New York, was at the head of

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26a. The following clause relating to the establishment of higher courts is found in the "Lawes." "That the names of the several courts to be held in each riding three times a year shall be called the Court of Sessions." In continuation the same article goes on to speak of the respect due to "courts which so nearly represent his Majestie's sacred person, and that such order, gravity and decorum which doth manifest the authority of the courts may be sustained."

The sessions were to begin the first Tuesday in June, in the East Riding, the second Tuesday in June, in the North Riding, and the third Tuesday in June in the West Riding. The second court of sessions was to be held the first, second and third Wednesdays of December, and the third sessions on the first, second and third Wednesdays in March, in the East, North and West Ridings respectively. The sessions were not to exceed three days in duration.—Scott's "Courts of the State of New York," p. 73.



this court for two of its early years, 1665 and 1667, Thomas DeLavall (1666) and Cornelis Steenwyck (1668) succeeding to the chief magistracy by direct appointment by the governor. In 1669, Governor Lovelace consented to the revival of the Dutch custom of nominating a double set of magistrates, the governor choosing the magistrates for the next two years from those nominated by the freemen. In 1671 the term of office was reduced to one year.<sup>26b</sup> Cornelius Steenwyck was mayor from 1668 to 1671, De Lavall succeeding him in 1671 and giving way to Matthias Nicolls in 1672. Thomas Lawrence was mayor in 1673, and had to give way in August to the three burgomasters, Van Brugh, Luyck and De Peyster, chosen by the Dutch Council of War, to revive the Schepens Court.

The outstanding personality of the Mayor's Court of New York of the first English period was Thomas Willett. He was born in England, about 1611, the son of Rev. Andrew Willett, D. D., and grandson of Rev. Thomas Willett, prebend of Ely Cathedral. He was of the Separatist colony of Leyden, Holland, whence came the Pilgrims to Plymouth colony in 1620. Willett arrived in the Plymouth colony in 1629, it is recorded, with the remnant of John Robinson's church. He became a freeman at Plymouth in 1633, and made Plymouth his home until about 1660, although as a fur trader and ship owner he was constantly travelling along the New England coast. He established trading posts from Kennebec to the Delaware, and was known even in Albany before Stuyvesant came. He was highly esteemed in the Plymouth colony, and in 1648 was chosen to command the military company. From 1651 to 1665 he was elected "an assistant to the Governor

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26b. In the year 1669, as a signal mark of sanction and respect, the Duke of York presented the mayor of the city with a silver mace, as an insignia of office, and to each alderman he presented a gown.

In 1671, the English custom of publicly proclaiming bans of marriage was instituted here, and a record of marriages ordered to be kept by the clerk of the Mayor's Court.—*Ibid*, p. 92.

annually." He was of such worthy repute among the Dutch of New Netherland that Governor Stuyvesant was willing, in 1650, that Captain Willett, of Plymouth, and another Englishman, George Baxter, should decide the long-standing boundary dispute between Connecticut and New Netherland. The Hartford Boundary Treaty of 1650 was the result. In 1657, he was called upon to act as arbitrator between Plymouth Colony and Rhode Island, in regard to the ownership of Hog Island, in Narragansett Bay. When, in 1654, war against New Netherland had been decided upon by some of the colonies of New England, Captain Willett's influence with the Indian tribes of the Hudson was such that he was asked to accompany the New England commissioners "unto the Manhatoes and to be assistant unto them in advice and council." However, the expedition was abandoned when it was seen that united action by the English colonies was not possible. In 1660 Captain Willett settled in Wanamoissett, Rehoboth, Massachusetts. In July, 1664, he was in New Amsterdam, upon a trading voyage probably, when rumor of the coming of an English fleet reached the Dutch city. Willett, it seems, was the first to hear it, "and hastened to inform Stuyvesant, who proposed at once the most energetic measures for defence." Shortly afterwards news came from Holland that the English fleet known to be on the way to America was, in fact, "to reduce the New England colonies to obedience and uniformity in state and church," and that therefore "New Netherland had nothing to fear." However, when Nicolls and the English fleet did appear before New Amsterdam and demand its surrender, Captain Willett, who knew how futile a defiant attitude would be, aided Colonel Nicolls in presenting terms to Governor Stuyvesant. Willett accompanied the English troops to Albany, in the capacity of interpreter, after New Amsterdam had surrendered. He proved to be of such assistance to the English governor that early in 1665 Colonel Nicolls "requested Gov. Prence of Plymouth to



release Captain Willett, in order that he might have his help in reducing the affairs in New York 'into good English.'" So, it came about that Thomas Willett, who did not belong to the province, but who "was greatly esteemed among the Dutch, whom more than once he had served in important trusts," was the choice of Governor Nicolls for the office of mayor, when the Mayor's Court of New York was created in 1665. Captain Willett owned some realty, however, in New York Colony, which investment, no doubt, he regretted having made when, with the coming of the Dutch again in 1673, his estate was confiscated. However, he was not then in the colony, having returned to Plymouth. He died in Seekonk, or in that section of Massachusetts, about 1674.

Thomas Willett had considerable part in the development of that part of Massachusetts. He was very successful in his dealings with the Indians. In 1661, the northwest corner of the Plymouth Patent was still in Indian ownership, but Captain Willett extinguished the Indian title in that year by treaty with Wamsutta, son of Massasoit. This became part of Taunton and Rehoboth purchases. The original Taunton purchase was made in 1637, from Massasoit, for an insignificant consideration, and the second purchase cleared an immense tract. Captain Willett was given considerable liberty of action, the only proviso being "That he do not too much straiten the Indians." His was an active, useful life, which took him into all the New England colonies, and made him of prominent record in each. He had many children, his wife, Mary Brown, of Plymouth, bearing to him eight sons and five daughters. One daughter married a son of the famous Thomas Hooker, of Hartford. One of his sons, Thomas Willett, became a councillor under Governors Andros and Sloughter. Thomas (2) Willett was high sheriff of Yorkshire 1676-78, and first sheriff of Queens County, 1683-89. Another Thomas Willett, probably grandson of the first, was member of the Eighth General Assembly, and was expelled

September 22, 1701, for having presented a paper "writ in barbarous English," representing that the organization of the House was illegal, one Abraham Gouverneur, an alien, having control, as Speaker. In the next year the same Thomas Willett became a judge of Queens County Court. William Willett was county judge of Westchester, 1721-35. And the descendants of Thomas (1) Willett, first mayor of New York, are innumerable.

Thomas Delavall, second mayor and again appointed in 1671, was a captain under Governor Nicolls, with whom he came out from England, and of whose first provincial council he was a member. The other mayors, Cornelis Steenwyck, Matthias Nicolls, and John Lawrence, have already been biographically sketched herein.

During the first English period there was no other municipal court quite like that of New York City. The Bailiwick Court of New Castle was, perhaps, the nearest to it in status; but there was considerable delay in establishing that court. The other country towns were served by Constable's Courts, at least in towns where the Schepens Courts did not still exist. That there were any Dutch courts functioning five years after the Duke's laws were introduced is surprising, but the records of at least one judicial district—the Delaware—indicate that the Dutch courts and Dutch legal system lingered long in some parts of the former New Netherland province.

It seems that, on the Delaware, Governor Nicolls was loth to disturb the judicial system of the former New Amstel colony. When Sir Robert Carre came to take possession of that region in the name of the Duke of York and Albany and the British crown, New Amstel became New Castle, but the schepens court was permitted to continue "for six months, or until His Majesty's pleasure be further known."<sup>27</sup> The

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27. After the reduction of the Dutch upon the Delaware, Sir Robert Carre . . . took command of the territories on that river, with the seat of



King's or the Duke's pleasure was not known during Colonel Nicolls' term as governor, and the schepens court was still functioning in New Castle in 1668, when Lovelace succeeded to the governorship. And evidently, no definite plans had even then been formulated in respect to the Delaware, for in April, of that year, in ordering changes in New Castle which would make the schout and schepens councillors to Captain John Carre (the governor's deputy at Newcastle) Governor Lovelace ordained "That the laws of the government established by his Royal Highness be showed and frequently communicated to the said Councillors and all others, to the end that being therewith acquainted, the practice of them may also *in convenient time* be established, which conduceth to the public welfare and common justice."<sup>28</sup> So that evidently

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the government at New Amstel, or New Castle, as it was now called, and immediately entered into an agreement "on behalf of themselves and all the Dutch and Swedes inhabitants on the Delaware Bay and Delaware River" for the government of the country.

. . . By the terms of agreement, it was provided *inter alia*, "that the present magistrates shall be continued in their offices and jurisdictions to exercise their civil power as formerly," and "that the schout, the burgo-master, sheriff and other inferior magistrates shall use and exercise their customary power in administration of justice within their precincts for six months, or until his Majesty's pleasure is further known."—Eastman's "Courts and Lawyers of Pennsylvania.

28. Ordinance of April 21, 1668, promulgated by Governor Lovelace, as to government of settlements on the Delaware, reads in part:

"That to prevent all abuses or oppositions in Civil magistrates, so often as complaint is made, the commissioned officer, Captain Carre shall call the Schout, with Hans Bloch, Israel Helme, Peter Rambo, Peter Cock, Peter Alrichs or any two of them as Councillors, to advise, hear and determine by the major vote, what is just, equitable and necessary in the case or cases in question.

"That the Commissioned officer, Captain Carre, in the determination of the Chief Civil affairs, whereunto the temporary forementioned Councillors are ordained, shall have a casting voice where votes are equal.

"That the fines for Præmunires and light offences be executed with moderation; though it is also necessary that all men be punished in exemplary manner.

"That the laws of the government established by his Royal Highness be showed and frequently communicated to the said Councillors and all others, to the end that being therewith acquainted, the practice of them may also *in convenient time* be established, which conduceth to the public welfare and common justice."



Dutch law still prevailed on the Delaware. However, an ordinance for the government of the Delaware, under date of June 14, 1671, seemed to aim at preparing the way for a change, by providing that constables might be appointed "as in the rest of his Royal Highness' dominions."<sup>29</sup> An ordinance of the following year erected the town of New Castle "into a corporation by the name of a bailawick" and provided "that the office of Schout be converted into a sheriffalty." Peter Alrichs became bailiff general of New Castle and the Delaware, but it is doubtful whether the Duke's Code was even then used. In the next year the Dutch came again into power, and Peter Alrichs became commandant of the South River under that brief régime, which established three judicial districts for that region, with one court at New Amstel, one at Upland, and the third at the Whorekill. In 1674, when the English again came into control, the Delaware courts were reorganized. Andros continued all the former officers and magistrates in office, excepting Alrichs. But, apparently, the Duke's Code was still an unknown legal system to the Delaware magistrates, and evidently was not used, for in September, 1676, Governor Andros found it necessary to imperatively order "that the books of Laws established by his Royall Highness and practiced in New York, Long Island and dependencies, be likewise in force and practice on this river."<sup>30</sup> Prompt

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29. "That constables may be appointed to keep the King's peace, who shall have staves with the King's Arms upon them as practiced in the rest of his Royal Highness' dominions," and "that they may have the King's Arms to be set up in their Courts of Judicature, as well as on the staves, the which they will be at the charge of themselves.

30. Ordinance dated September 25, 1676:

"Edmond Andross, Esqr., and Seigneur of Sausmarez, Lieutenant and Governor General under his Royal Highness, James, Duke of York and Albany, etc., of all the territories of America:

"Whereas, The last year at my being at Delaware upon application of the inhabitants representing that my predecessor, Governor Lovelace had begun to make a regulation for the due administration of justice according to the laws of this Government, pursuant to which I did appoint some magistrate and make some rules for their proceeding the year ensuing or until further order; in which having upon mature deliberation, by the advice of



action was not even then taken, the record showing that on June 8, 1677, the Court of New Castle wrote to Governor Andros: "Wee lykewise humbly desier that the sending of the Lawe Booke may not bee forgott; there being great occasion for the same." On July 17, 1678, they wrote, requesting "the new corrected Law-booke and seal for ye office as heretofore promised."<sup>31</sup>

Bearing in mind that life was very uncertain in those days of wars, pestilences and legal codes which provided capital punishment for innumerable minor offenses, the number of capital cases tried in the New York courts were few. In the records of New York City, one capital case was that of infanticide, the accused being a Dutch woman, Engeltie Hendricks. On September 13, 1666, she was sentenced to death, but also to receive twenty-four slashes with rods twenty-four hours before being "brought to the 'Townes Gate.'"<sup>32</sup> However, she escaped from the jail and was not apprehended until 1669, when she was hanged. In the "Records of New Amsterdam," Vol. I, 188, is a report, under date of July 26, 1669, of an "Examination of William fisher whether he had any con-

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my Council, made some alteration, they are to remain and be in force in form following:

1. "That the books of Laws established by his Royal Highness and practiced in New York, Long Island and dependencies be likewise in force and practice in this river, and precincts, except the Constable's Courts . . ."

There were twelve sections to this ordinance, and a clause providing for the determination of all matters by the justices of the sessions courts, seeing that "by this regulation there are no overseers appointed nor constables' courts."

31. "Records of the Court at New Castle."

32. "for which abominable act (of infanticide) the sd Engel Hendrick merited to be punished others to an Exampel. Noo Soo it is that We the Ald'men of New York by vertue of a Commission doeing Justice in the name of his Magesty, the King of England, Schotland, france and Ireland & his Royall Highness, the Duke of York &ca. — their Governr, the Right Honnble Colonel Richard Nicolls doe Condemne the sd Engel Hendricx as we doe by these Presents, that she shal be brought from this Place to the Whipping Post and then & there to Receive twentie Slashes with Rods and then to Remaine in Prison the time of 24 houres and to be brought out the Townes Gate."—"Records of New Amsterdam," Vol. I, 34.

versation with Engel Hendrix, who is lately put to death for murdering her Child." The sentence upon a negro who was involved in this woman's escape was "that he serve as public executioner for a period of five years or pay a fine." Apparently he did the latter, although it does not seem that the city was able to recruit its hangmen from a reputable class. A letter written by Jo. Clarke, "From ye Secretary's Office in ffort James the 28th day of January in the evening, 1672-3," and addressed to "Capt. Silvester Salisbury, Governor at Fort Albany," explains to the Albany commandant that "our Hangman, Ben Johnson," having been "taken in divers Thefts and Robberyes" and found guilty "scapd his neck through want of another Hangman to truss him up." Still, he did not altogether escape punishment, being given "only thirty-nine stripes at the Whipping-Post, loss of an ear and banishment."<sup>33</sup> Allard Anthony, who had been burgomaster of New Amsterdam for several years under Stuyvesant, and was a member of the first Mayor's Court of New York, also sheriff, 1665-67 and 1671-73, gained the nickname of "The Hangman," whether from actually officiating as such, or from the responsibility that devolved upon him, as sheriff, of finding an executioner when there was need of one. Those were stern days.

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33. "The Historical Magazine," 1st series, Feb., 1860, Vol. IV, 50.







## CHAPTER XX.

### THE BRIEF COLVE PERIOD.\*

The fortunate circumstances by which the Dutch regained their former North American province without more than the firing of a few shots have been referred to in Chapter XIX. Once again the province was New Netherland. But the fort which had proved useless on the only two vital occasions—1664 and 1673—on which the people looked to its fortifications and artillery for protection was not renamed Manhattan; this time it was designated Fort William Hendrick, in honor of the Prince of Orange. This association probably suggested a new name for the capital. At all events, the passing of New York did not bring New Amsterdam into its own, for the capital now took the name of New Orange. Albany soon became Willemstadt, and Fort Albany was christened Fort Nassau.

The administration at the outset was by a Council of War, consisting of the two admirals, Evertsen and Binckes, and three captains, Anthony Colve, Nicholaes Boes and A. F. Van Zeyll. With the characteristic alacrity of men of war, the Council at once proceeded to take all possible advantage of their fortunate position, so easily gained. It may have seemed to them well-nigh incredible that their victory had been so bloodless. But the very ease with which the supremacy had been gained may well have suggested to the more cautious of the commanders that a reversion might come just as easily.

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\*AUTHORITIES—Bryant's "History of the United States"; "Records of the Township of Newarke," compiled by William A. Whitehead and Samuel H. Conger for N. J. Hist. Soc.; Chester's "Legal and Judicial History of New York"; Macaulay's "History of England"; Werner's "Civil List of New York," 1888 edition; Ridpath's "History of the World"; "History of Bench and Bar of New York" (1897); "Documents Relative to the Colonial History of New York," by O'Callaghan; "Records of New Amsterdam"; Brodhead's "History of the State of New York"; "New Netherland Register"; Eastman's "Courts and Lawyers of Pennsylvania."



Hemmed in, as New Netherland was, by English colonies, much more populous, the Council of War must have realized that quick measures to strengthen their hold of the province were necessary, if they would hold back the English, who could and would probably unite to retake it, as soon as they had recovered from their astonishment.

However, that was the concern of the Council of War, it did not greatly worry the average New York citizen. Indeed, the coming of the Dutch, after the first day or so brought little excitement to New York City; the inhabitants were more concerned in what effect the change of government might have on their trading than in the government itself. They were getting used to bloodless revolutions. The surprisingly uneventful days they had lived through when Dutch rule had given way to English, in 1664, led them to anticipate nothing very exciting in the present change. They were not disillusioned.<sup>1</sup> In fact, the normal daily routine of the average New Yorker was hardly disturbed. Those who concerned themselves with public affairs found some important reorganization work before them, but the average inhabitant was able to go about his daily affairs without the least excitement or political concern.

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1. Mayor, aldermen and sheriff gave place in name as well as officially, and burgomasters, schepens and schouts were again hailed as magistrates. Dutch supremacy was asserted, and Dutch influences were again felt to be paramount in all the relations of society.

But the affairs of every-day life soon resumed their usual channels. Personal hostilities, perhaps, may have seized such an opportunity for their indulgence, but now as nine years before, there seems to have been little disturbance of the neighborly harmony and friendship existing between the two peoples. Here, indeed, was then no large city; no dangerous class was hidden away in dark cellars and obscure attics, to swarm in unexpected numbers, ready for bloodshed and plunder at the first sign of temporary anarchy. But, nevertheless, the capture of New Amsterdam by the English and the recapture of New York by the Dutch are among the most remarkable instances in history of peaceful revolutions. There was the confiscation of public property . . . but the private suffering seems to have been hardly enough to be counted as an act of war.—Bryant's "History of the United States," II, 349.

Dutch residents of New York, who in the past had taken part in public affairs became active with the Council of War. Delegates were chosen "to confer with the Council of War at the fleet on behalf of the commonalty," and these delegates<sup>2</sup> were instructed by the Council of War "to convoke the commonalty here in the City Hall as soon as possible and to cause them to nominate six persons as *burgomasters* and fifteen as *schepens*, to wit, from the wealthiest inhabitants and those only who are of the Reformed Christian Religion, from whom the said Commanders and Council of War" would elect some "as Magistrates of this City." This direction was given on August 12th, only five days after the Dutch fleet had first appeared off New York. Accordingly, four days later, nominations were made,<sup>3</sup> and from the list the Council selected those who were to again bring the city under burgher government. They appointed three burgomasters, Johannes van Brugh, Egadius Luyck and Johannes de Peyster. The six schepens chosen were Jeronius Ebbingh, William Beeckman, Jacob Kip, Gelyn Verplanck and Louwerens van der Spiegel; and Anthony de Milt became schout.

The principal object in establishing burgher courts was, it seems, the organization of a system of defence. The burgomasters, with the captains of militia, were to exercise almost military authority in their districts, arm the militia, and keep them well in hand for rapid mobilization, when need arose. The five Dutch towns of Long Island, therefore, were next dealt with. In these towns, Midwout, Breukelen, Amersfoot, Utrecht, Boswick, and also Gravesend and Staten Island, courts of the schout and schepens quickly superseded the con-

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2. Cornelis Steenwyck, Cornelis van Ruyven, Johannes de Peyster, Johannes van Brugh, Martin Kregier and Nicholas Bayard.

3. Cornelis Steenwyck, Cornelis van Ruyven, Johannes van Brugh, Martin Kregier, Egadius Luyck, Johannes de Peyster and Nicholas Bayard, for burgomasters; Jeronimus Ebbingh, Willem Beeckman, Balthazar Bayard, Steven van Cortlandt, Rynier Williamsen, Jan Vinge, Conraet Ten Eyck, Jacob Kip, Gelyn Verplanck, Louwerens van der Spiegel, Francois Rombouts, Adolf Pietersen, Peter Jacobsen and Peter Stantenburgh, schepens.



stable's courts. Jacob Strycker, of Breukelen, became schout of the Dutch group of towns, in each of which four schepens were named. Staten Island was administered by a schout and two schepens, Pieter Biljou having the former responsibility. The English group of towns on the western end of Long Island—Flushing, Jamaica, Middleburg, Oyster Bay and Hempstead—had no other sane course than to yield to the Dutch, for they realized that those were war times, and the naval commanders might upon little provocation deal sternly with resistance by Englishmen within the province. Not long afterwards, the Dutch governor issued a proclamation to make it generally known that negligence to coöperate with the government might bring death to the negligent, "as an example to others." So, in each of the English towns on the western end of Long Island three schepens were soon appointed, with William Lawrence as schout of the group. Francis de Bruyn was appointed secretary of the courts of the Dutch towns, and Carel van Brugg of the English towns of that part of Long Island. The five towns of the eastern end of Long Island—Southampton, Easthampton, Southold, Seatucket and Huntington of the East Riding of Yorkshire—were farther from the military arm, and were not brought under governmental control so quickly. They perhaps did not much regret the passing of the Lovelace administration, for they had long been agitating for annexation by Connecticut. But they did not at all like the thought of Dutch rule. In the situation thus presented they looked to Connecticut; and the Dutch demand had to take peremptory tenor, with evident force and dire penalties, before these towns bowed to the inevitable, and accepted local government by two schepens of each town, with Isaac Arnold as schout and Henry Pierson as secretary.<sup>3a</sup>

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3a. Connecticut resolved to do what she could to retain eastern Long Island, at all events. The authorities at Hartford sent a threatening letter to Colve, by a special messenger; and at the same time two commissioners

The towns of New Jersey were quickly converted to the Dutch system. The case of Bergen has been stated in Chapter XVI. Some of the town records of Newark might be quoted<sup>4</sup> to show how apprehensive the Dutch authorities were of ultimate attack by the English. New courts of justice were established in New Jersey (Achter Col) and also on the Delaware (South) River, where allegiance was eagerly volunteered.<sup>5</sup>

No difficulty, in this respect, was experienced in the towns of the upper Hudson. Jan Gerritse van Mark became schout at Schenectady, and schepens were appointed for Swaenburg, Hurley and Marbletown. For the town of Esopus Isaac Graevenraet was made schout and William Montagne secretary. "For Willemstadt and Rensselaerswyck, Andrew Drayer, who was commander at Fort Nassau, was appointed schout and Johannes Prevoost secretary of the court. Four schepens were appointed for Willemstadt and three for Rensselaerswyck; the schepens of Willemstadt were Gerrit van

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were appointed to visit the island, ascertain the state of affairs, and warn such Dutch authorities as they might find there of the possibility of extreme measures. To the letter Colve replied sharply, that it was "impertinent and absurd," and that he could hardly credit its coming from Winthrop. The commissioners were met off the Long Island coast by three officers whom Colve had previously sent out to visit the eastern towns and receive their submission. Treating each other civilly, the two parties of commissioners went together to Southold, where the Englishman triumphed, insofar as to find the inhabitants almost unanimously in their favor, so that Colve's men retired without accomplishing anything. The Connecticut messengers returned to Hartford and reported, and some volunteers were sent over to help the Long Islanders. But no conflict followed, and the whole matter went over quietly until it was swallowed up in the more important events which were soon to follow. (Cession of New Netherland to England by the Treaty of Westminster, March 6, 1674).—Bryant's "History of U. S.," II, 351.

4. At Town Meeting of August 4 (O. S.) 1673, it was agreed "that we should join with the rest of the Province, to agree with the Generals at N. Orange, to have a privileged County between the Two Rivers Passaick and Ararantine (Passaic and Raritan). . . .

"August 12, 1673. Mr. Crane, Mr. Bond, Sarjt. John Ward, Mr. Bruen, Stephen Freeman & John Curtis are nominated Magistrates.

"August 30, 1673. Lieut. Samuel Swain and Thomas Johnson are nominated for Captains, Sarj't John Ward and Josiah Ward are nom-



Slechtenhorst, Davis Schuyler, Cornelis van Dyck and Peter Bazardes.”<sup>6</sup>

By the end of September the reorganization of the province had advanced far enough to permit the greater part of the fleet to depart for other waters, where they might be more needed in the war against England. On September 27, 1673, the two Dutch admirals departed with all their ships of the line except two. These they left with Captain Anthony Colve, whom they appointed Governor-General of the regained New Netherland, “with all its appendencies.” They quite realized that the future was uncertain, for the governments of the English colonies had been actively considering united aggressive action to oust the Dutch from the continent. But they were needed elsewhere, and their colleague, Captain Colve, might perhaps—with the aid of the organized Dutch militia of the loyal towns—be able to stave off attack until reinforcements could reach New Orange from Holland. Cornelis van

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niated for Lieutenants, Sarj’t Richard Harrison and Mr. Samuel Harrison are nominated for Ensigns.”

Town Meeting of September 24th, 1673. Item. “It was also by the Magistrate’s order published, that, in consideration of the present Danger, and fear of what may further ensue, We do, therefore, require that every Man in our Town under Sixty and above Sixteen years of age, shall meet together with their arms well fixed, upon Eight of the Clock on the first day of October, which is this day Senight, upon the Penalty of five Shillings. The Ammunition for each Man to bring with him being half a Pound of Powder and Twelve Bullets fir for his gun, or Tow Pounds of Pistol Bullets, and upon that Day the Soldiers shall chuse the rest of their officers.”

As late as July 10, 1674, it did not seem to be known in the Province that by the terms of the Treaty of Westminster the province again passed under English dominion. Town report of June 29 (O. S.) 1674, has an entry reading: “It was voted that there shall be a petition sent to the Governor (and Council) for the obtaining of a Confirmation of our bought and paid for lands, according to the General’s promise.”—“Township Records of Newarke,” compiled by Wm. A. Whitehead and Samuel H. Conger for the New Jersey Historical Society.

5. Peter Alrichs, Bailiff General of New Castle and the Delaware, promptly gave his adhesion to the new government, and as a reward was appointed sheriff or commandant of the South River by Colve on September 19th. He was instructed to get the inhabitants to nominate eight persons as magistrates for each of the three courts, with districts as follows:



Ruyven, bearing urgent appeals for such aid, had sailed for Holland in September.<sup>7</sup> So, the Dutch fleet sailed away, and Governor-General Colve was left to his difficult task. In the work he was aided by a councillor, a secretary, and registrar. Cornelis Steenwyck, as councillor, was "to assist in the direction of all cases relative to justice and police, and further in all such military concerns both by water and by land, in which the governor shall deem proper to ask his advice and assistance to administer justice both in civil and criminal cases."<sup>8</sup> Matthias Nicolls, as may be supposed, had no part in the Colve administration, Cornelis van Ruyven being appointed Provincial Secretary, although in his absence Nicolas Bayard, who was appointed secretary of New Orange, also acted as registrar of New Netherland. Captain Willem Knyffe became *schout-fiscal* of New Netherland, thus, of course, being public prosecutor in the higher court.<sup>9</sup> When,

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One Court of Justice for New Amstel, to which provisionally shall resort the inhabitants dwelling on the east and west banks of Kristina kill unto Boomtjes Hook, with those of Apoquenamins kill inclusive.

One Court of Justice for the inhabitants of Upland, to which provisionally shall resort the inhabitants both on the east and west banks of Kristina kill and upwards unto the head of the river.

One Court of Justice for the inhabitants of the Whorekill, to which shall provisionally resort the inhabitants both on the east and west sides of Cape Hinlopen, unto Boomtjes Hook aforesaid.

Reversion to English personnel did not take place until November 2, 1674.

6. Chester's "Legal and Judicial History of New York," quoting the "New Netherland Register," p. 71.

7. Governor Colve . . . and his compatriots, exultant as they were over the restoration of its lost jewel to the Fatherland, trembled when they thought of their weak condition, surrounded by and mingled with the enemies over whom they had achieved their victory. Reinforcements, which the *schout* and *schepens* of New Orange had already written for, must be sent out at once, and Holland must take them under their especial protection; for it was not to be expected that the few thousands of subjects which the States had in America could long withstand the anger and retaliation of the French and English, by whom New Netherland was surrounded. Secretary van Ruyven, sailing for home in September, had been charged with these urgent appeals; but his vessel almost suffered shipwreck, had to put into Nantucket, whence the secretary, to the surprise and disappointment of every one, made his reappearance in New Orange during the following November. The news he carried was destined to



to the surprise of everybody, Van Ruyven came into the province, via New England, in November—his ship having been forced by storms into Nantucket, and there seized by Massachusetts in September—he took his place as a member of the Governor's Council, which, as under the former Dutch system, became the superior court of the Province.<sup>10</sup>

“Instructions issued by the governor to the schouts and magistrates outside of New Orange, bearing date of October 1, 1673, show the jurisdiction and powers of the local tribunals. It was directed that in all cases relating to police, security and peace of the inhabitants, also to justice between man and man, should be finally determined by the magistrates, to the amount of and under sixty florins, beavers, without appeal. If the sum was in excess of that amount, the aggrieved party might appeal to a meeting of the schout and councillors delegated from the villages subject to the jurisdiction of the schout.

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reach Holland by other hands. Would it arrive in time to secure the Province from the possibility of English recapture—Bryant's “U. S.,” II, 351.

8. “Documents Relative to the Colonial History of New York,” Vol. II, 611.

9. “to take care that the sovereign jurisdiction and domain of their High Mightinesses and his Serene Highness over this Province be duly maintained without suffering anything to be directly or indirectly attempted to the prejudice or injury thereof; also to apprehend and prosecute all malefactors, whether criminal, political or military, who have committed anything against the Province or its supreme magistracy; likewise to pay particular attention that all scandals, irregularities and ungodliness be driven from the Province; moreover, that good laws and justice be administered without respect of persons and in all courts of justice within this province, according to the laudable customs, laws and ordinances of our Fatherland, stern to execute all placards and ordinances, also all sentences and judgments of the supreme magistracy, according to their tenor, and to prosecute all law breakers as they deserve.”—*Ibid*, II, p. 669.

10. Cornelis van Ruyven was soon added to the Council, which as thus constituted was the superior court of the province. The city magistrates were also consulted when affairs of importance came up. Administration of law in the towns was entrusted primarily to district courts similar to the English courts of session. Two courts on the Island of Manhattan, one in the Bowery village, just north of the city proper on the east side, and the other in Harlem, were subordinate to the city court.”—Chester's “Legal and Judicial History of New York,” I, 182.



For this purpose one person was to be annually appointed from each village; and all were directed to assemble in a convenient place to be selected by them, and power was given to them to pronounce final judgment to the amount of two hundred and fifty florins, beavers. But in all cases exceeding that sum, either party should be entitled to an appeal to the Governor-General and Council. It was ordered that in case of an inequality of votes the minority should submit to the majority; but those who were of a contrary opinion should have that opinion recorded in the minutes, but should not divulge it without the meeting under pain of arbitrary correction. All criminal offences were to be referred to the Governor-General and Council, but smaller offences, such as quarrels, abusive words, threats, fisticuffs and such like, were left to the jurisdiction of the magistrates of each particular village. The magistrates were also empowered to make ordinances for the government of their districts, relating to petty offences, provided they were conformable to the law of the Fatherland, the same to be first approved by the Governor-General and Council."<sup>11</sup>

The first three months of the Colve administration were anxious ones to the Dutch governor, who knew that the New England governments were putting "their heads together." Perhaps he did not know that they had failed to agree on any united campaign.<sup>12</sup> Still, he preserved a bold front, settled

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11. "Ibidus," I, 183.

12. New England was naturally both indignant and alarmed to hear that the Dutch were again established on its borders. The commissioners of the colonies met at Hartford early in September, less than a month after Evertsen's easy conquest, and passed a recommendation that each member of the New England confederation made preparations for defence against a possible Dutch attack. Nor were those wanting who urged upon the meeting a more aggressive policy. But want of union, and a natural disinclination for war, prevented. Massachusetts refused to take advantage of the offer of an English captain, whose ship lay at Boston, to retake New York with no other aid than that of supplies and a reinforcement. Unless the conquered region could be annexed to her own territory, that colony did not care to engage in any efforts for the recapture of New York. Plymouth was indifferent in the matter, so long as freedom from Dutch interference with her coasters was secured.—Bryant's "U. S.," II, 351.



the Connecticut danger, as to the Long Island towns of the East Riding—at least for the moment; and in November, when he heard that De Ruyven's ship had been confiscated by the Massachusetts authorities, he promptly retaliated by seizing four Massachusetts coasters, whereupon Massachusetts "fitted out a war vessel."<sup>13</sup> But the year passed without serious strife, and Colve pursued his plan of preparing for what he felt would happen after winter had passed. By March, 1674, he had the defences of Fort Willem Hendrick so completely repaired, and his militia forces so well organized, that he felt he could withstand whatever attack might be attempted by forces from New England. What would happen if England also should send an expedition against him he may not have tried to imagine. Still, he took every possible measure to make the most of what fighting material he had in the colony, ordaining that every male between sixteen and sixty years should be enrolled in the militia units, evasion of this being even punishable by death. But, notwithstanding that his was to all intents a military government, and that he could not safely excuse any act, or permit any institution to exist that might endanger his government, it cannot be stated that his administration was an arbitrary one. He, of course, set aside the English courts, for he wished all local government to be in the keeping of his own countrymen; but his administration was too brief to make much impression on the judicial history of the province. "His provisional instructions for the

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13. There was a momentary prospect of direct conflict with Massachusetts, excited by Colve's prompt confiscation of four Massachusetts coasters, in retaliation for the carrying away of the wreck of Van Ruyven's vessel from Nantucket, as the prize of an English privateer. Massachusetts fitted out a war vessel and made some preparations for reprisals. But she did nothing more; nor did Plymouth, in spite of the urging of Connecticut. Rhode Island did not belong to the New England confederacy, and so what warlike measures they took were of precautionary character, having more to fear from New Netherland than the latter had from herself. As the year 1673 closed, the rivals in America occupied, in common, a position of passive hostility, the Dutch being probably the most apprehensive.



schout, burgomasters and schepens of the city of New Orange was about as far as he went in relation to legal matters. This ordinance, which was issued on January 15, 1674, has been generally known as the Colve Charter,<sup>14</sup> although it is in no sense a city charter; it defined the duties of the magistrates and the functions of their court. It embraced some new features relating to local government, particularly in giving increased power in criminal cases to the board of burgomasters and schepens, and in providing that the schout fiscal should preside at the meetings of the board in the absence of the governor, instead of permitting the burgomasters and schepens to elect one of their own number for presiding officer."

But Colve's efforts availed not. The Dutch had lost so severely at sea that he might have looked long but in vain for naval aid. De Ruyter had not recovered from the effects

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14. The ordinance known as the Colve Charter reads as follows:

"1st. The Schout and Magistrates, each in his quality shall take care that the Reformed Christian Religion conformable to the Synod or Dordrecht shall be maintained, without suffering other Sects attempting anything contrary thereto.

2. The Schout shall be present at all meetings and preside there unless the Honble, Heer Governour or some person appointed by him be present who then shall preside, when the Schout shall rank next below the youngest acting Burgomaster. But whensoever the Schout acts as Prosecutor on behalf of Justice or otherwise, having made his complaint, he shall then rise up and absent himself from the Bench during the deciding of the case.

3. All matters appertaining to the Police, Security, and Peace of the Inhabitants, also to Justice between man and man shall be determined by final Judgment by the Schout, Burgomasters and Schepens aforesaid, to the amount of Fifty Beavers and under, but in all cases exceeding that sum, each one shall be at liberty to appeal to the Herr Governour & Council here.

4. All Criminal offences which shall be committed within this City and Jurisdiction thereof shall be amenable to the Judicature of said Schout, Burgomasters and Schepens, who shall have power to judge and sentence the same unto Death inclusive; provided and on condition that no sentence of corporal punishment shall be executed unless the approval of the Herr Governour General and Council shall be first sought and obtained therefor.

5. The Court shall be convoked by the President Burgomaster, who shall, the night before, make the same known to Captain Willem Knyff (who is hereby provisionally qualified and authorized to be present and



of the two great naval battles of 1672 and 1673. He confessed that the former, against the English fleet under the Duke of York—the engagement in which ex-Governor Nicolls was killed—was the most terrible of the thirty-two naval battles in which he had had a part. The other battle, that of August 11, 1673, at the mouth of the Texel, against the English under Prince Rupert, had been so sanguinary and indecisive that “each of the crippled armaments withdrew, dragging their bloody length across the sea.” Moreover, the fortunes of the Dutch on land in 1673 became so desperate that William of Orange had had to open the dykes, giving up much of their precious territory to the sea, in order to keep the French out of Amsterdam. In this serious state of affairs in the homeland, it would not be surprising if the appeal from Colve for reinforcements fell upon deaf ears. As a matter of fact, the eyes of the Dutch were turned to the East, not the West. In

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preside over the Court in the name and on behalf of the Hr. Governour), and so forth to the remaining Schout, Burgomasters and Schepens.

6. All motions shall be put by the first Burgomaster, whose proposition being made and submitted for consideration, the Commissioner there presiding in the name of the Hr. Governour, shall first vote there, and so afterwards the remaining Magistrates, each according to his rank; and the votes being collected, it shall then be concluded according to plurality; but if it happen that the votes are equal, the President shall then have power to decide by his vote, in which case those of the contrary opinion, as well as those of the minority may Register their opinions on the Minutes, but not publish the same in any manner out of the Court on pain of arbitrary Correction.

7. The Burgomasters shall change Rank every year, wherein the eldest shall first occupy the place of President, and the next shall follow him; but during this current Year the change shall take place every four months, since three Burgomasters are appointed for this year.

8. The Schout, Burgomaster and Schepens shall hold their Session and Court Meetings as often as the same shall be necessary, on condition of previously appointing regular days therefor.

9. The Schout, Burgomasters and Schepens shall have power to enact, and with the approbation of the Hr. Governour to publish and affix some Statutes, Ordinances and Placards for the Peace, Quiet and Advantage of this City and the inhabitants thereof within their district, provided that the same do not in any wise conflict but agree as much as possible, with the Laws and Statutes of our Fatherland.

10. Said Schout, Burgomasters and Schepens shall be bound rigidly to observe and cause to be observed the Placards and Ordinances of the



that grave period of national misfortune, the Dutch felt that their future lay in the East, not the West. They had reached such a pass in the United Provinces, their homeland, that the Prince of Orange, whose courage always rose when danger was greatest, had tried to transmit to them some of his own optimism—in the face of the desperate emergency of flooding their land as their only hope of saving the Fatherland—by pointing out that all was not lost, even though the dykes were opened; that if their natal soil should be buried under the sea, Hollanders might still have a bright future; might survive even Holland. They had lands beyond the seas, and ships to carry them thither. “Liberty and pure religion,” he said, “might take refuge in the farthest isles of Asia.” The shipping in the ports of the republic “would suffice to carry 200,000 emigrants to the Indian Archipelago,” where the Dutch commonwealth “might commence a new and more glorious existence, and might rear, under the Southern Cross, amidst the

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Chief Magistracy, and not to suffer anything to be done contrary thereto, but proceed against the Contraveners according to the tenor thereof; and further promptly execute such orders as the Herr Governour General shall send them from time to time.

11. The Schout, Burgomasters & Schepens shall be also bound to acknowledge their High Mightinesses the Lords, States General of the United Netherlands and His Serene Highness, the Lord Prince of Orange as their Sovereign Rulers and to maintain their High Jurisdiction, Right and Domain in this Country.

12. The election of all inferior officers and servants in the employ of said Schout, Burgomasters and Schepens shall, with the sole exception of the Secretary, be made and confirmed by themselves.

13. The Schout shall execute all judgments of the Burgomasters and Schepens without relaxing any, unless with the advice of the Court, also take care that the jurisdiction under his authority shall be cleansed of all Vagabonds, Whorehouses, Gambling houses and such impurities.

14. The Schout shall receive all fines imposed during his time, providing they do not exceed yearly the sum of Twelve Hundred Guilders Sea-want value, which having received he shall enjoy the just half of all the other fines, on condition that he presume neither directly or indirectly to compound with any criminals, but leave them to the judgment of the Magistrates.

15. The Schout, Burgomasters and Schepens aforesaid shall convoke an assembly on the 11th day of the month of August, being eight days before the election of new Magistrates, and in the presence of the Com-



sugar canes and nutmeg trees the Exchange of a wealthier Amsterdam, and the schools of a more learned Leyden."<sup>15</sup>

So it happened that when, by the fortunate pressure of English Protestants, the King of England early in 1674 resolved to sign a separate treaty of peace with the United Provinces, he found that the Dutch were not averse to sacrificing New Netherland. Hence, by the Treaty of Westminster, signed on March 6, 1674, New Netherland passed finally to the English, and Dutch rule ended in North America. Rumor of this outcome of the war reached Connecticut in May. They found a way of getting the rumor spread in New Orange, where it stirred the angry Dutch inhabitants into rashly vowing that no authority, whether of the "States or Prince," would be recognized that called for the surrender of their province. Fortunately saner minds prevailed, and on July 11 there was little excitement when Governor Colve gave official notice at the Stadt Huys that peace had been made between England and Holland, and that by the treaty New Netherland had passed to the British.

Soon after the signing of the Treaty of Westminster, in March, 1674, King Charles II of England appointed Major Edmund Andros, "an officer of distinction," to receive the surrender of New Orange and New Netherland under the treaty. In June a patent was issued to the Duke of York, and the latter appointed Major Andros as his deputy governor. In October a Dutch frigate reached New Orange, and its com-

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missioners to be qualified for that purpose by the Honble. Governr General, nominate a double number of the best qualified honorable and wealthy persons and only such as are of the Reformed Christian Religion, or at least well affected toward it, as Schout, Burgomasters and Schepens aforesaid, which nomination shall be handed and presented folded & sealed, on the same day, to his Honor; from which nomination the Election shall then be made by his Honor on the 7th day of the Month of August, with continuation of some of the old Magistrates, in case his Honor shall deem the same necessary."

<sup>15</sup> Macaulay's "History of England," I, 170-171.

mander bore to Colve formal instructions from the Dutch Government, in regard to the surrender; and on November 1, 1674, the British frigates "Diamond" and "Castle" anchored off Staten Island. On November 9 Governor Colve, having completed his arrangements for the transfer, absolved the city officials from the oaths of allegiance to Holland; and on Saturday, the 10th, "New Netherland and its dependencies" were formally given into the charge of the English deputy, "Governor Major Edmund Andros on behalf of His Britannic Majesty."

The passing of Dutch rule from New Netherland is thus recorded in the court records of New Amsterdam:

"On the 10/i November AO 1674, the Province of N. Netherland is surrendered by Governor Colve to Governor Edmund Andros in behalf of his Majesty of Great Britain."







## CHAPTER XXI.

### FIRST ANDROS ADMINISTRATION.\*

English names were restored and English laws reëstablished almost as quickly, after Andros came, as the Dutch had abolished them under the brief Colve regime. The alacrity with which the Dutch of New York had coöperated with Colve in his governmental plans was equalled in the rallying of the English colonists to the standard of Andros, who found he could move quickly, being unhampered by considerations such as Nicolls had had to always keep in mind. The status of the English in the former Dutch province was clearer now. Nicolls had had to temper authority with tolerance; for while the British were in possession, their right to New Netherland was challenged, whereas now the English were in undisputed and rightful supremacy. Andros, therefore, could proceed at once with the plan of Anglicizing the province, and go much farther than Nicolls had deemed it politic to go.

The new patent issued to the Duke of York and Albany was in almost identic terms to that of 1664, excepting that the Duke by the second patent was given authority over not only British subjects within the territory, but also "any other person or persons."<sup>1</sup> One would naturally suppose that a government in possession would have absolute authority over all

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\*AUTHORITIES—"Journal of the New York Assembly, 1673," p. 92; O'Callaghan's "Documents Relative to the Colonial History of New York"; Werner's "Civil List and Constitutional History of the Colony and State of New York," 1888; Chester's "Legal and Judicial History of New York"; Eastman's "Courts and Lawyers of Pennsylvania"; "Records of the Mayor's Court of New York"; Brodhead's "History of the State of New York."

1. The confirmation of this second grant is recorded in Vol. I, p. i., of Deeds in the office of the Secretary of State of New York in Albany. It has been reproduced in the Report of the Regents of the University on the Boundaries of the State of New York, 1873, p. 21. See also the "Journal of the New York Assembly," March 8, 1673, p. 92.



within the government. Evidently it was not so under the first patent, this perhaps to some extent explaining Nicolls' tolerance of Dutch courts.

Andros was given more specific instructions as to the general affairs of the province—matters of trade, land-owning, quit-rents, imports and tariffs, freedom of conscience, and so on. He was directed to satisfy the inhabitants by judicious government “for their protection and benefit, for the encouragement of planters and plantations, and the improvement of trade and commerce, and for the preservation of religion, justice and equity among them.” As to the “formes of Justice,” his instructions were “to put in execution such lawes and ordrs” as he would find had “been established by Coll. Nicolls and Coll. Lovelace and not to vary from them, but upon emergent necessities.”<sup>2</sup> On August 6 the Duke of York had given to Andros a copy of the Duke's Laws, or Nicolls Code, but evidently the new governor was not to alter the code without his permission.<sup>3</sup> So, on November 9, 1674, the

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2. “As to ye course of Justice, you are to take care yt 't be administered wth all possible equality wthout regard to Dutch or English in their private concerns, 't being my desire as much as may be, that such as live under your governmt may have as much satisfaction in their condicon as is possible, and yt without ye least appearance of partiality, they may see their just rights preserved to ym inviolably—

And as to ye formes of Justice, I thinke it best for you to put in execution such lawes, rules and ordrs as you find have been established by Coll. Nicholls and Coll. Lovelace, and not to vary from them but upon emergent necessities, and ye advice of yor Councill and the gravest and experienced people there; and if any such alteracon be made, that it be only temporary for a yeare, and if it be not confirmed by me within that time, then to be utterly voyd at ye end of that yeare and of no force at all, as if such alteracon or new law never had been prmitted. I therefore recomend to you to continue ye Courts of Justice, as they have been established and used hitherto. And as to ye choice of Magistrates and Officers of Justice, I must referr yt to yor prudence, wch when you shal be upon ye place, will best direct you to those persons wch have most reputacon both for their abilities and integrity, and for those reasons most acceptable to ye Inhabitants. But you are not to make any officer for above one yeare or otherwise yn during pleasure.”—See Vol. III, 218, of O'Callaghan's “Documents Relative to the Colonial History of the State of New York.”

3. “To put in execucon ye said laws except such as shall have apparent



day on which the outgoing Dutch governor, Colve, absolved the magistrates of New Orange from their oaths of allegiance and their administration of law by the Dutch codes, the incoming English governor, Andros, issued a proclamation announcing "the will of James regarding the rights and properties of the ceded province" and reestablishing the "Duke's Laws." He declared "that the known Book of Laws formerly establisht and in force under his Royall highnesse government is now again confirmed by his Royall Highnesse the which are to be observed."<sup>4</sup>

So the town courts and courts of Sessions of the Lovelace administration were reestablished, and, where possible, the officers who had held appointment in these courts under Lovelace were reinstated. "The two courts of sessions on Long Island and one for the towns of Esopus were revived." Sylvester Salisbury was appointed High Sheriff of Yorkshire on December 9, Michael Siston is recorded as appointed sheriff at Albany on November 4, Thomas Gibbs became sheriff at New York on November 10,<sup>5</sup> George Hall was given that responsibility at Esopus,<sup>6</sup> and Captain Edmund Cantwell took

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inconveniences in them; and after your settlemt at New York wth ye advice and helpe of your Councell carefully to peruse and consider ye same, and if you finde it necessary for ye ease and benefitt of ye people and ye good of my service to make any alteracons, addicons and amendments in ye said laws, you are wth ye first opportunity to represent ye same unto me, to ye end you may receive from me such ordrs and direcons as shall be necessary for authorizing you to put ye same in execucon."—*Ibid.*, III, 226.

4. "I have thought fitt to publish and declare. That all former grants, privileges or concessions heretofore granted and all estates legally possessed by any such under his Royall Highnesse before the late Dutch Government, As also all legall, judicial proceedings during that government to my arrivall in these parts are hereby confirmed; And the possessors by virtue thereof to remain in quiet possession of their rights. It is hereby further declared that the known Book of Laws formerly establisht and in force under his Royall Highnesse government is now again confirmed by his Royall Highnesse, the which are to be observed and practiced together with the manner and times of holding Courts therein menconed as heretofore. And all Magistrates and Civill Officers belonging thereunto to be chosen and establisht accordingly."—*Ibid.*, III, 227.

5. "Civil List of New York," 1888 edition.

6. Chester's "Legal and Judicial History of New York," I, 198.



the sheriffalty of the Delaware on November 2,<sup>7</sup> 1674. Everywhere within the Duke's territory English laws were to be enforced, and in most districts they began to function forthwith. Two months after the issuance of the proclamation, the first session of the reestablished Court of Assizes was held in New York on the day designated in the Duke's Laws, and was held regularly thereafter."<sup>8</sup>

The Mayor's Court at New York was one of the first of the inferior courts to again convene, its first session after the proclamation being on November 13, three days after Andros had ordered the changing of the name of the city from New Orange to New York, and that of the fort from Fort Willem Hendrick to Fort James. On the same day, November 10, 1674, Governor Andros had appointed Matthias Nicolls to the mayoralty in the city, with John Lawrence as deputy mayor and William Dervall, Frederick Phillipse, Gabriel Minvielle and John Winder as aldermen.

It was ordered that the court records thereafter be copied in English; consequently, at the first session of the Mayor's Court, "every paper offered was preserved in that language, except in the case of those Dutch or other foreign individuals who were too poor to pay for translation."

These measures, it would seem, would effectively establish English law and procedure, and obliterate Dutch processes. But, as has been instanced in an earlier chapter (XIX), Dutch codes were in use in some courts even in 1678. In New York City the inclination, for a decade, was toward the Dutch modes of practice, for with two exceptions "the twelve immediate successors of Nicolls in the mayoralty were either of Dutch origin or had been residents of New Amsterdam under the Dutch."<sup>9</sup>

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7. Eastman's "Courts and Lawyers of Pennsylvania," I, 21.

8. Chester's "Legal and Judicial History of New York," I, 198.

9. *Ibid*, I, 199.

9. The provision that all paper should be in the English language

Mayor Nicolls, and those appointed with him to the Mayor's Court, continued in office until October, 1675, when Andros granted a "commission or charter under which the corporate government as it had before existed was reinstated." Under the new charter, the number of aldermen became six, and upon the corporation was conferred "full power and authority to treat courts, administer justice, and rule and govern the inhabitants according to the laws of the province and the privileges and practices of the State."<sup>10</sup> Under the new commission, the Mayor of New York and four aldermen were authorized to sit in the Court of Sessions.<sup>11</sup>

In 1678, Governor Andros was able to assure the Lords of Trade that the judicial system as planned was in full operation, and that the "law booke in force" was that "made by the Governor & Assembly att Hempsted in 1665 and since confirmed by his Royall Highnesse."<sup>12</sup> But the influence of Dutch methods was long felt. It seems, indeed, that although the Nicolls Code particularly provided for trial by jury, the "custom was not strictly adhered to." The Dutch citizens

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introduced the English forms, but still to a very considerable extent the Dutch modes of practice prevailed. This condition of things continued for nearly a decade.—*Ibid*, I, 199.

10. "Records of the Mayor's Court," Vol. II.

11. For a court of sessions in New York, the mayor, with any four aldermen, was authorized to sit. As before, the civil municipal business and any criminal business which might come before the mayor's court, were discharged at the regular sittings, no arrangement being made for the separation of the civil from the criminal functions of the magistrates. Regular sittings of the court were fixed for every three weeks. Following the practice instituted by Nicolls, an order was made that all cases should be tried before a jury, but, as before, this custom was not strictly adhered to. The influence of the Dutch methods was still felt, and the Dutch practice of referring cases to arbitration was continued and practiced very generally for many years.

12. "1. The Governr is to have a Councell not exceeding tenn, with whose advice to act for the safty & good of the country & in every towne, Village or parish a Petty Court, & Court of Sessions in the several precincts, being three on Long Island, & Townes of New Yorke, Albany & Esopus, & some smale or poore Islands & out places; And the General Court of Assizes composed of the Governor and Councell & all the Justices & Magistrates att New Yorke once a yeare, the Petty Courts Judge



and many of the English clung to the practice of referring cases to arbitration. Two English lawyers arrived in the province in 1682, and they were soon followed by others, most of them practicing the system of special pleading then in vogue in England. In this way, English forms of procedure gradually made headway against the Dutch, but the former "did not entirely supercede those of Dutch origin until well into the first and second decades of the eighteenth century."<sup>13</sup>

Possibly, it had not been the original intention of the Duke of York, or Governor Nicolls, to make the Court of Assizes the legislative body of the province. It became such in actual practice, however. And under Andros the court assumed the proportions of a General Assembly. All those who attended were, it is true, of magisterial or executive status, and did not look upon themselves as assemblymen; but in their functioning, as members of the Court of Assizes, the Duke of York seemed to look upon them as such, for he asserted that the Court of Assize was, in actual practice, a Provincial Assembly. It certainly was a bench of extraordinary size, if that recorded for the session of October, 1680, was normal, thirty-one being seated.<sup>14</sup> It certainly also was representative of all districts

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of five pounds, & then may appeale to Sessions, they to twenty pounds & then may appeale to Assizes to ye King, all sd courts as by Law.

2. The Court of Admiralty hath been by speciall Comission or by the Court of Mayor & Aldermen att New Yorke.

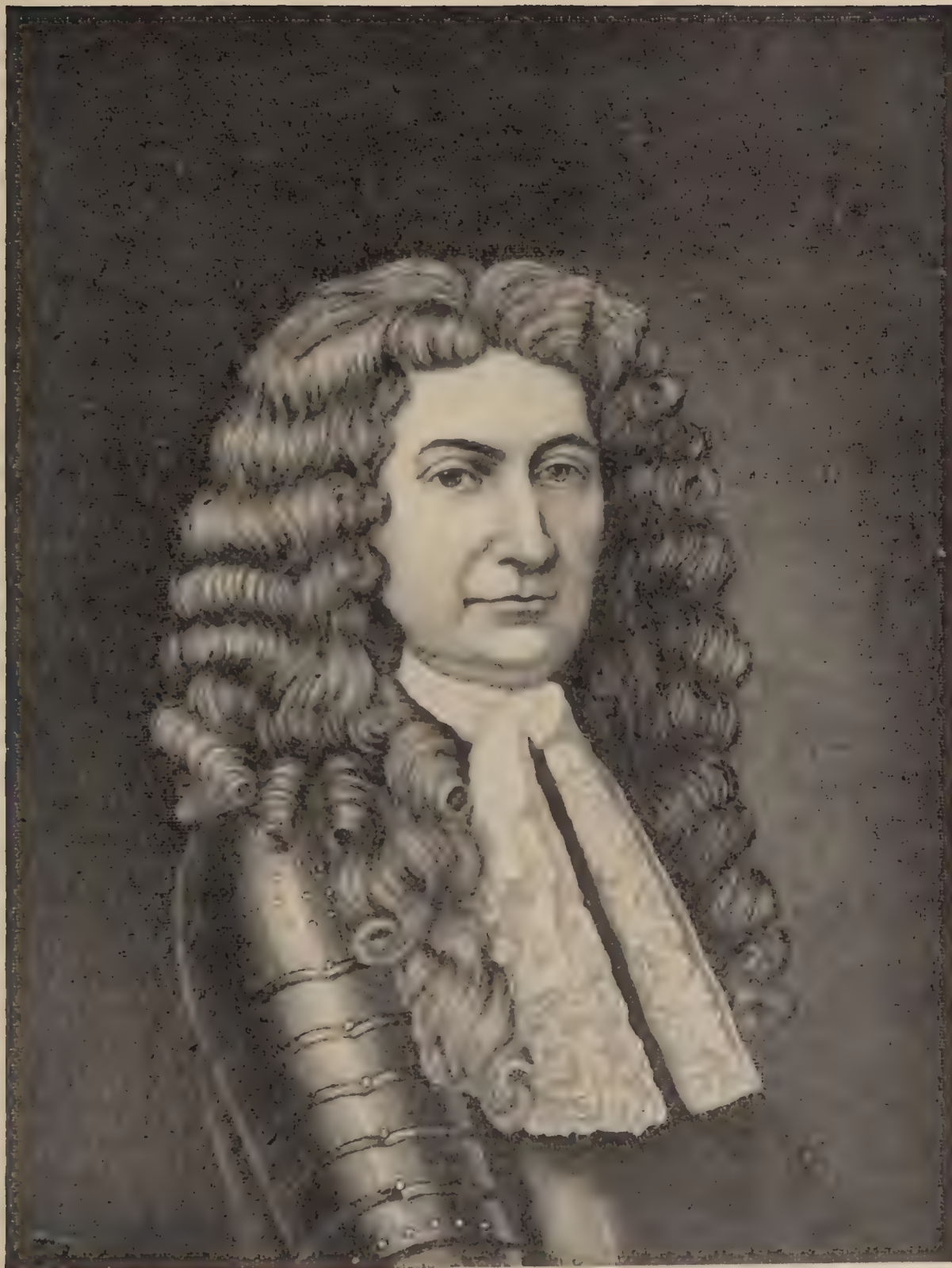
3. The chiefe Legislatiue power thereis in the Governr with advice of the Councill the executive power Judgemts giuen by ye Courts is in the sheriffs & other civill officers.

4. The law booke in force was made by the Governor & Assembly att Hempsted in 1665 and since confirmed by his Royall Highnesse."—O'Callaghan's "Documents Relative to the Colonial History of the State of New York," III, 260.

13. Chester's "Legal and Judicial History of New York," I, 201.

13. Finally however, arbitration, the particularly Dutch custom, ceased to be resorted to except in the case of disputed actions, which were referred generally to three persons, who were first called arbitrators and then referees. This custom of reference continued in its original form until 1772, when its was finally regulated by statute enactment.—*Ibid*, I, 201.

14. Governor Edmund Andros, Secretary Matthias Nicolls, Counselors William Dyer, Frederick Phillipse, Thomas Dervall and Stephen van



SIR EDMUND ANDROS





of the province. Therefore, the Duke of York had some justification for pointing out this institution, in refusing to grant the colonists permission to organize a separate legislative assembly.<sup>15</sup> Still, the Duke could not bring the colonists to see as he did; and the agitation went on. Possibly Andros was, even in his first years, manifesting the arbitrary leaning which made his second administration so intolerable;<sup>16</sup> but, whether good or bad, no administration that taxed the people without giving them any voice at all in the assessment could hope to be popular. It seems that Andros was not in favor of the establishment of a General Assembly, also that considerable correspondence passed between His Royal Highness and himself on the subject, the Duke of York in a letter of January 28, 1676, referring to letters he had "formerly writt" "touching

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Cortlandt; Mayor, Francis Rombout; Aldermen, William Beeckman, Johannes van Brugh, Lewis, Marius, Verplanck and Wilson; Richard Betts, High Sheriff of Yorkshire; Justices, Topping Arnold, Woodhull and Wood, of the East Riding; Willett, of the North Riding, and Hubbard, Elbertsen and Palmer, of the West Riding; Teller and Van Dyck, of Albany; DeLavall, of Esopus; Spaswill, Browne and Parker, of New Jersey; Gardiner, of Nantucket; and Knapton and West, of Pemaquid.—Brodhead's "History of the State of New York," II, 336.

15. Letter of April 6, 1675, from the Duke to the Governor reads, in part: "First yn touching Generall Assemblies which ye people there seem desirous of intimacon of their neighbor Colonies, I think you have done well to discourage any mocon of yt kind, both as being not at all comprehended in yor Instructions nor indeed consistent wth ye forme of government already established nor necessary for ye ease or redresse of any grievance yt may happen, since yt may be as easily obtained by any peticon or other addressed to you at their Generall Assizes (wch is once a yeare) where the same persons (as Justices) are usually present, who in all probability would be their Representatives if another constitucon were allowed."—O'Callaghan's "Documents Relative to the Colonial History of New York," Vol. III, 230.

16. The conduct of the new Governor, the tyrannical Andros, realized their (the Dutch of New York) worst fears. He revived the abuses of the Lovelace administration. Taxes were levied without authority of law, and the protests of the people were treated with scorn. In response to the demand for a popular legislative assembly, the Duke of York wrote to Gov. Andros that popular assemblies were dangerous to government, and that he did not see any use of them. He attempted to force upon the colonists a law, enacted on his own mere motion, establishing for three years the rate of customs. This inflamed the colonists to the point of resistance.—Werner's "Civil List of New York," 1888 ed., p. 49.



Assemblies in those countreyes," and reiterating his belief that "such Assemblies . . . would be of dangerous consequence."<sup>17</sup>

However, at this time the agitation for representative government was mild by comparison with what developed during the next few years; and the Andros administration was so pleasing to His Royal Highness and the King that, when the governor was on a visit to England in 1677, he was knighted. As Sir Edmund Andros he comes more unfavorably into American history.

Trouble had been brewing for Andros for several years; ever since he had been governor, indeed, and had claimed governorship over not only New York, but over New Jersey as well. The seizure of New York by the Dutch and the subsequent cession of it to the English Crown by the Treaty of Westminster had extinguished the Duke's title. He did not resist the issuance of a new patent by the King to himself, for he saw that if his own title under the first patent had been extinguished by the events recited, all grants made by himself to others—for instance to Carteret and Berkeley—were also nullified. He made haste to benefit by this by extending the authority of Andros over the province of New Ceasarea or New Jersey. Other events which he could not control, how-

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17. "I have formerly writt to you touching Assemblies in those countreys and have since observed what severall of your lattest letters hint about that matter. But unless you had offered what qualificasons are usuall and proper to such Assemblies, I cannot but suspect they would be of dangerous consequence, nothing being more Knowne then the aptness of such bodyes to assume to themselves many priviledges which prove destructive to, or very oft distube, the peace of ye government wherein they are allowed. Neither doe I see any use of them wch is not as well provided for, whilst you and your Counsell governe according to ye laws established (thereby preserving every man's property inviolate) and whilst all things that need redresse may be sure of finding it, either at ye Quarter Sessions or by other legall and ordinary ways or lastly by appeale to myselfe. But howsoever, if you continue of ye same opinion, I shall be ready to consider of any proposalls you shall send to yt purpose."—Chester's "Legal and Judicial History of New York," I, 201, quoting O'Callaghan's "Colonial Documents."

ever, influenced the Duke to grant the territory anew to Carteret, a few months after the issuance of the commission to Andros; but by this reconveyance, on August 8, 1674, to Carteret, the Duke reserved certain governing authority. Hence it came about that Andros was vested with the power of over-governorship in the territory governed by the Carterets. Andros, of course, asserted like authority in the other part of New Jersey granted to Berkeley and his successors. And the difficulty he encountered was alike in each part. The colonists throughout New Jersey had become used to the system of a General Assembly, to which they were able to send their own delegates, without whose approval no taxation could be imposed. When the Quintripartite Agreement of 1676 formed the provinces of East Jersey and West Jersey of the former New Ceasarea, or New Jersey, the authority of the people in West Jersey became even clearer, for in the new province voting by delegates at the annual assembly was to be by secret ballot, instead of by the former "common and confused way of cries and voices." Trial by jury was secured to every settler; and all the rights of the English common law were promised. This in some instances clashed with the Duke's Laws, so it evidently was not the intention of the proprietors to make the Duke's code the law of the province. Indeed, in both East and West Jersey, it seems the authority of the Duke of York and of his governor, Andros, was positively challenged.

Attracted by the governmental code of West Jersey, a party of two hundred and thirty Quakers, with a managing board of commissioners, embarked on the good ship "Kent" in March, 1677. While the ship still lay in the river Thames, King Charles, attracted by her crowded decks, came alongside and inquired whither she was bound. When told, he "wished them a good voyage and gave them his blessing." But their reception in New York, by Governor Andros, was not nearly so pleasant. They found that Fenwicke, to whose Salem colony they were bound, had been thrown into prison in Fort



James early in that year, because he had challenged the Duke's right to levy taxes in his province. And he was still in prison, the commissioners found. They had been further shocked when, upon reporting the arrival of the "Kent," and their purpose, to Andros, the latter had asked what evidence they had of title from his royal master, the Duke of York. They could produce none. The successive grants from the Duke to Berkeley, and from Berkeley to others, gave, they asserted, right of government as well as title to the soil. Andros was of a different opinion however. He averred that it was "as much as his head was worth" to grant them authority to set up independent government without orders from his master. If they had had "but a line or two from the Duke, he would be as ready to surrender it to them as they would be to ask it." Without it, he had but one course open; he must hold his government over the whole of the Duke's territory, by his sword if needs be. Still, pending word from his royal master, Andros was not unwilling that the Quakers should proceed to their destination, with the commissioners in authority, as magistrates of the Duke and under the Duke's government. Fenwicke was permitted at the same time to go upon his own recognizance, and directed to report in the following August at New York, for final decision on his case.

Governor Andros soon afterwards sailed for England, perhaps to discuss the problems of government in the Jersey provinces, and other perplexities of the New York government. Possibly affairs of state had little to do with his return to England; but when he returned to New York he certainly came with added prestige and possibly increased arrogance, being now of knightly rank.

Very soon after his return to New York he found that the situation in East Jersey called for his personal and resolute action. He had endeavored to enforce taxation in both New York and New Jersey, and had ordered that all imports must pass through the New York Customs House. In answer, Governor Philip Carteret had proclaimed, with the hearty sup-

port of the Assembly, that all vessels coming directly to the province should be free from duties. Andros had intercepted a ketch bound for Eliabethport with a cargo of rum, and compelled her captain to pay duties at the New York custom house. Andros was determined that the will of the Duke should prevail; therefore unless Carteret would bow to the will of Andros, no good could have resulted had Carteret accepted the invitation of Andros to meet on Staten Island to discuss the matter. He did not go. One governor was as determined as the other. Andros announced that he would erect a fort "at Sandy Point," to enforce the law. Carteret declared that this should be resisted; and when Andros went into New Jersey a month later, to seek a peaceful conference, Carteret met him with a military force, to oppose his landing. With commendable gentlemanliness, Carteret permitted Andros to land, seeing that he came without troops; the conference, however, came to naught. But a few weeks later Andros resorted to different tactics. A troop of New York soldiers made a night attack on Elizabethtown. Carteret was arrested and taken to New York, where he was put into prison and treated as a common criminal. In May, 1678, Governor Andros himself presided over the special session of the Court of Assizes which had been commissioned to try the New Jersey governor. That in itself was an unfair advantage. Still, the outcome of this trial must have convinced Governor Andros that the case of the Duke was very weak, or that he himself was decidedly unpopular with the people of New York, for, although he sent the jurors out three times, Carteret was acquitted. The latter was, however, compelled to give security that he would not again assume any authority in New Jersey. He kept his word, and transferred the case to England, where the dispute was presented for the decision of the Duke himself. Andros, however, found that the absence of Carteret did not make the position of the Duke in New Jersey much stronger, for although the Assembly accepted the gov-



ernment of Andros, they declined to recognize the Duke's Laws.

West Jersey also had referred its case to England, the English commissioners reviewing it in September, 1679. Penn and his associates secured their ends by "a masterly argument." "It was a bold and striking plea in favor of popular liberty; and the commissioners, advised by Sir William Jones, decided that James' grant had reserved no jurisdiction, and that none could rightly be claimed."

The Duke accepted the decision, relinquishing right to both East and West Jersey, reluctantly, no doubt. This reacted against Andros, whose treatment of Carteret did not enhance his reputation with the King's ministers, whatever may have been the Duke of York's private opinion. Complaint also came from the New York province as to the arbitrary actions and intolerant bearing of Governor Andros. These grievances could not be ignored by the Duke; and finally Andros was recalled. He left New York on January 6, 1681, perhaps realizing that by his actions—which were all for the Duke and the Crown—he had not fallen so seriously into royal disfavor as his recall would infer. As a matter of fact, his account of his stewardship was so completely satisfactory to his royal master that Andros "was complimented upon the success of his administration," and received tangible evidence that these words were sincerely meant. He became a gentleman of the King's Privy Chamber, and in later years was destined to be entrusted with far greater authority than that which he had just relinquished in New York. Perhaps the Duke of York would have liked to have sent him back at once, as Governor, but possibly his commissioners advised him that reinstatement would be imprudent. Whatever the cause, Andros, for a little while, had to pass his time in the royal presence, while another royal favorite administered the Duke's province. Lieutenant-Governor Brockholst held rank as commander-in-chief in New York until the arrival of the next governor, Colonel Thomas Dongan, in 1683.

## CHAPTER XXII.

### THE DONGAN RÉGIME.\*

A month or so before the departure of Andros from New York, but some months after he had been relieved of the governorship, the merchants of New York City, and the taxpayers in general, assumed a dogged attitude of resistance of governmental measure enacted without their consent. The obnoxious import duty, which had been in force for three years, expired by its own terms in November, 1680; and the merchants positively refused to recognize a renewal of the measure. In fact, they sued the Collector of the Port of New York for detaining illegally goods upon which tax had not been paid. "He was arrested, was brought before the Court of Assize and charged with high treason, and sent to England for trial."<sup>1</sup> This somewhat unusual charge, against a governmental functionary who was but enforcing the will of the royal proprietor, must have conveyed to the Duke of York

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\*AUTHORITIES—Bryant's "History of the United States"; Chester's "Legal and Judicial History of New York"; O'Callaghan's "Documents Relative to the Colonial History of New York"; Werner's "Civil List of New York," 1888; Lincoln's "Constitutional History of New York"; "Colonial Laws of New York"; Hoffman, "Treatise Upon the Court of Chancery"; Redfield's "English Colonial Polity and Judicial Administration"; "History of the Bench and Bar of New York," 1897; "National Cyclopaedia of American Biography"; Scott's "Courts of the State of New York"; Brook's "History of the Court of Common Pleas of City and County of New York."

1. On leaving the colony Andros had appointed Anthony Brockholls—or Brockholst—as Commander-in-Chief of the Militia and as Lieutenant-Governor. But he neglected to renew the order for collecting the customs duties, which had expired by limitation, and Brockholst was at once involved in a controversy with the merchants. They refused to pay these duties, and William Dyre, formerly of Rhode Island, who was the collector of the port as well as mayor of the city, seized a cargo of goods. The merchants brought a suit against the collector; his act was pronounced illegal, and an indictment found against him for usurping power over the people. Brockholst and his council sustained the decision of the court, and the city seal and his commission were demanded of Dyre. He refused to surrender them, disputed the authority of the court summoned specially for



some idea of the growing discontent of the provincials. And if the malcontent were not sufficiently evidenced by the finding in this case, the Duke was destined soon to be made directly aware of it, for out of an opinion expressed by the jury that tried the collector grew a petition addressed to the Duke and signed by all classes in the province, praying for the early establishment of a General Assembly in New York like those of the Jersey provinces, and in conformity with the constitutional rights of Englishmen.<sup>2</sup>

The disruption of financial measures, and the depletion of the provincial treasury, by this opposition of the people was a matter of grave concern to the Duke of York, who dreaded that the maintenance of the public offices of the province might fall upon his private purse which, if one might draw conclusions from the chronically impecunious state of his brother, King Charles, was not always full. Moreover, the Duke was probably not unmindful of the experience of the Dutch West India Company, which reached a hopeless state of bankruptcy through, among other causes, repressive measures that alienated the sympathies of the people. Without their coöperation the province could not prosper. This must have been obvious to the Duke's advisers, if not so clear to the Duke, who was mentally dull; and there were other imperative

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his trial, on the ground that their power and his emanated from the same authority—the Duke of York—and one could not be responsible to the other where there was a common master. He was thereupon arrested and sent to England for trial, where, in due time, it was decided that he was guiltless of any offence.—Bryant's "History of United States," Vol. III, 6.

2. In this emergency the court appointed John Young, the High Sheriff of Long Island, to draw up a petition to the Duke of York, asking for the establishment of a general assembly for the province—Chester's "Legal and Judicial History of N. Y.," Vol. I, 205.

The petition represented to the Duke that arbitrary taxation, without regard to the wishes of the people, was a grievance that could not be borne, and that a remedy for this and other evils could only be found in the right of self-government through a General Assembly chosen by popular vote. "The people," wrote Brockholst, "generally cry out for an Assembly." "Authority and Magistracy," he said, "is grown so low that it can scarce maintain the public peace and quiet of the government."



reasons why the royal proprietor could not serve his own purposes well by further delaying the establishment of a General Assembly. Therefore, one of the important missions entrusted to the new governor, Thomas Dongan, was that of bringing such a popular body into existence, an Assembly that would be representative of all the freeholders of the province.<sup>3</sup>

In its general terms, Governor Dongan's commission was very like that given to his predecessor, Andros. It was dated September 30, 1682, but Dongan did not reach New York City until August 25, 1683. On the Monday following his arrival, "he appeared at the city hall and made public his commission, announcing at the same time that he was directed to confirm to the city all its existing rights and privileges and even more, as might be found necessary in the future." He made early appointments to his Council, John Spragg becoming provincial secretary and also clerk of the Court of Assizes, and Anthony Brockholst being retained as lieutenant-governor. In the place of William Dyre, Brockholst had acted as collector, or receiver-general, of the Port of New York from May 2, 1681, to February 17, 1683, when he handed those responsibilities to Lucas Santen, who was confirmed in the office by Gov-

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3. "You are also wth advice of my Councill with all convenient speed after yor arrivall there, in my name to issue out Writts or warrts of Sumons to ye sevrall Sheriffes or other proper Officers in every part of yor said governmt wherein you shall expresse that I have thought fitt that there shall be a Genl Assembly of all the Freeholders, by the prsons who they shall choose to repsent ym in ordr to consulting wth yorselpe and the said Councill what laws are fitt and necessary to be made and established for the good weale and governmt of the said Colony and its Dependencyes and of all the inhabitants thereof, & you shall issue out the said Writt or Sumons at least thirty dayes before the time appointed for ye meeting of the said Assembly, wch time and also the place of their meeting (wch I intend shal be in New Yorke) shall also be menconed & expressed in the said Writt or Sumons, and you wth advice of my said Councill are to take care to issue out soe many Writts or sumons and to such officers, in every part, not exceeding eighteene, soe yt the planters and Inhabitants of every part of ye sd governmt may have convenient notice thereof and attend at such ellection, if they shall thinke fitt. And wn the said Assembly soe elected shalbe mett at ye time and place directed, you shall lett ym know



ernor Dongan in August of that year, and continued as receiver-general until 1687. Cornelis Steenwyck was named as mayor of New York by Dongan. The governor also permitted a Court of Sessions to function in the city, with the mayor and aldermen as magistrates, although, of course, he knew that soon the judicial code might be altered by the General Assembly he was authorized to establish.

Still, for the time being the Duke of York's Laws were in force and until new courts had been created, the courts of the existing code were the only ones that could be operated.<sup>4</sup>

The Court of Assizes was still the highest court of the province. And as the time of its regular annual session came on October 3, 1683, before an Assembly could be convened, the governor took his seat as presiding judge. It was its last session, and possibly its most important business had to do with matters of political and judicial reorganization. The session was hardly over before Governor Dongan issued notices, convening a General Assembly on October 17. As a matter of fact, he had not needed authority from the Court of Assizes, for he had authority in his own commission. Upon his own initiative, therefore, he had, on September 13, ordered the election of a General Assembly, consisting of fourteen representatives, apportioned as follows: Long Island, one; Staten Island, one; Esopus, two; Albany and Rensselaer's colony, two; Schenectady, one; Pemaquid and dependencies, one; Martha's Vineyard, Nantucket, Elizabeth and other ad-

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that for the future it is my resolucon that ye said Genll Assembly shall have free liberty to consult and debate among themselves all matters as shall be apprehended proper to be established for laws for the good governmt of the said colony of New Yorke and its Dependencyes, and yt if such laws shalbe propounded as shall appeare to mee to be for the manifest good of the Country in generall and not prejudiciall to me I will assent unto and confirme ym. In the passing and enacting of all such laws as shalbe agreed unto by the said Assembly, wch I will have called by the name of the General Assembly of my Colony of New Yorke and its Dependencyes wherein the same shalbe (as I doe hereby ordaine they shalbe) prsented to you for yor assent thereunto."—O'Callaghan "Documents Relative to the Colonial History of the State of New York," III, 331.



GOVERNOR ANDROS



THOMAS DONGAN





jaacent islands, one; Westchester, four; and New York four representatives.<sup>5</sup> The Assembly, by another account,<sup>6</sup> consisted of eighteen representatives, the majority of whom were chosen by the Governor and Council, but six by a "direct vote of the freeholders."

Unfortunately, the records of this, the first, legislative body organized by some degree of popular vote in the province of New York have not been preserved; but certain indirect records make it possible to name at least some of the members of the Dongan Assembly. In Chester's "Legal and Judicial History of New York" Henry Beeckman, William Ashton, Giles Goddard, Samuel Mulford, John Lawrence, Matthias Nicolls and William Nicolls are named; and in Werner's "Civil List of New York," for 1888, seven other names are given.<sup>7</sup>

The General Assembly passed fifteen acts during its first

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4. "I doe also hereby authorize you wth advice of my sd councill to elect and settle such and soe many courts of Justice & in such places as you shall wth advice of my said Councill judge to be necessary for the good governmt of the said place & for adjudgeing and determeineing all mattrs Civil and Criminall wherein you are to take care that ye same be as nere answerable to ye laws and Courts of Justice in England as may be, and to give me an account of such courts as you shall thinke fitt soe to erect, to ye end I might confirme or reject the same as I shall see cause, but the said courts may proceed and hold Recognizance of such matters as you and yor Councill shall appoint until my pleasure be signified to ye contrary."—*Ibid*, III, 333.

5. Werner, in "New York Civil List," 1888 edition, p. 67.

6. According to the instructions of the Duke, the membership of the assembly was to be eighteen representative citizens selected by the Governor and his Council, four from the city of New York, two from each of the three ridings of Yorkshire, one from Staten Island, two from the towns of Esopus, two from Albany and Rensselaerswyck, one from Schenectady, one from Pemaquid, and one from Martha's Vineyard and Nantucket. Six delegates were chosen by a direct vote of the freeholders or by a delegate convention.—Chester's "Legal and Judicial History of New York," Vol. I, 206.

7. FIRST ASSEMBLY—*First Session*—

Cornwall: Gyles Goddard. Westchester: Thomas Hunt, Sen. John Palmer, Richard Ponton, William Richardson. Speaker: Matthias Nicolls. Clerk: John Spragg.



session, which lasted for three weeks, from October 17, 1683. The most conspicuous of these acts was the measure known as "The Charter of Libertyes and Priviledges granted by his Royall Highnesse to the Inhabitants of New Yorks and its Dependencyes." This was enacted on October 30, and seemed to have the approval of the Duke. It did not bring from him a formal expression of approval, neither did he exercise his prerogative by vetoing the measure while he was Duke of York; therefore, it seems likely that he would have given it a reluctant approval had not his status materially changed in 1685, when, by the death of King Charles, he ascended the throne of England. He was no longer a proprietor by virtue of a royal grant, but ruler by birthright over all the dominions of England. The charter, which contained principles drawn, states Lincoln in his "Constitutional History of New York" "from the immortal Magna Charta,"<sup>8</sup> may have suited the Duke of York, but was somewhat offensive to King James II, for it declared that the supreme legislative authority "under his Majesty and Royall Highness should forever be and reside in a governor, counsell and the people meet

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*Second Session*—October 21-29, 1684.—

Matthias Nicolls, speaker; Robert Hammond, clerk.

SECOND ASSEMBLY. Convened October 20, 1685.

Speaker: William Pinhorne. Clerk: Robert Hammond.

Assembly adjourned November 3, 1685, to meet September 25, 1686. King James II, however, abolished the General Assembly June 16, 1686. Intelligence of his action was received in New York September 14, eleven days before the time fixed by Assembly for its Second Session. Governor Dongan had, in meantime prorogued the Assembly until March 25, 1687. In compliance with the edict of the King, this action was superceded on the 20th of January, 1687, by an order dissolving the General Assembly.

8. "The great principles enunciated in the Charter of Liberties are drawn from the immortal Magna Charta, which had for nearly five centuries been the source and strength of English free institutions; yet these Dutchmen, no less zealous for liberty than their English neighbors, were willing to accept, adopt, and assert as their own, the rights of citizens as defined by the Great Charter. . . . This charter, closely resembling our modern constitutions in form and substance, and continuing many provisions which have been continued in these instruments, might properly be called the original Constitution of New York."—Lincoln's "Constitutional History of New York.



in General Assembly." The King saw objectionable features in almost all of its clauses, but none perhaps so objectionable as that which plainly stated "that no taxes of any kind should be levied within the province without the assent of the people's representatives."<sup>9</sup> So the Charter of Liberties came under the royal veto at the time when New York and New England again came under the sway of the arbitrary Andros.

But there were other important acts of the first General Assembly that did not come under the royal ban. Among

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9. The first act of this the first General Assembly of the Colony of New York was entitled: "Charter of Liberties and Privileges granted by His Royal Highness to the Inhabitants of New York and its dependencies." Its first sentence contained the phrase: "People met in General Assembly," to which James objected, when he became King of England, on the ground that it is "not found in any other Constitution in America"; and this royal objection, with the character of the charter, places New York in advance of any other colony, and proves that it held the leadership in the struggle for equal rights and ancient liberties. The entire sentence read that "under His Majesty and Royal Highness, James, Duke of York, Albany, etc.," "supreme legislative power shall forever be and reside in the Governor, Council and People met in General Assembly." The year of its adoption witnessed the establishment of a free and representative government in Pennsylvania, and the first session of its General Assembly.

James became King of England in February, 1685. At a meeting of the Committee of Trade and Plantations March 3, this minute was ordered entered: "The Charter of Incorporation of the Province of New York being read, His Majesty doth not think fit to confirm," and the government was ordered assimilated to that projected for New England. Observations upon the charter were entered, which show that the objections were political, and demonstrate that the colonists were in advance of the inhabitants of other colonies, in their demands upon the Crown as well as in their concessions of personal liberty.

The Charter opened grandly. It declared "that for the better establishing of the government of this province of New York, and that Justice and Right may be equally done to all persons within the same, Be it enacted by the Governor, Council and Representatives now in General Assembly met and assembled, and by the authority of the same." And the charter, after providing for the election of a General Assembly, enacted that the Representatives of the Province, with the Governor and his Council, shall be Supreme and only legislative power. To this the King quietly inquired: "whether this does not abridge the acts of Parliament that may be made concerning New York." His observation upon this provision seemed to be somewhat in conflict with his remarks on the provision that the inhabitants be governed by and according to the laws of England. "This privilege," he said, "is not granted to any of His Majesty's plantations." Of the provision that sheriffs and other officers of justice be appointed with like



them was "An Act to Settle Courts of Justice." This act created four distinct tribunals: a Petty Court, or Town Court, in every town for the trial of small causes, with fortnightly or monthly sittings; a County Court, known as the Court of Sessions or Quarter Sessions, meeting quarterly or half-yearly in each county; a Court of Oyer and Terminer, and General Gaol Delivery, with original and appellate jurisdiction; and a Court of Chancery, which was to be the supreme court of

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powers as in England, he said: "This is not so distinctly granted or practiced in any other plantation." The charter provided "that the exercise of the chief magistracy and administration of the government over the said province shall be in the said Governor, assisted by a Council with whose advice and consent, or with at least four of them, he is to rule and govern the same according to the laws thereof." To this the King objected that "no other Governor is restrained from doing anything without the Council." The charter provided "that according to the usage, custom and practice of the Parliament of England, sessions of the General Assembly be held in this province once in three years at least," to which the King demurred, stating that triennial sessions are "an obligation upon the government greater than has been ever agreed to in any plantation, and the grant of such a privilege has been rejected elsewhere, notwithstanding a revenue offered to induce it." The provision that acts be presented to the Governor and Council for approval, said the King "seems to take away from the Governor and Council the power of framing laws as in other plantations." The provision limiting to two years the power of the Lord Proprietor to dissent to bills, said James, "does abridge the King's power and has been thought inconvenient in other plantations." The provision that the Assembly is to judge of the elections and the qualifications of its members "may be inconvenient, and is not practiced in some other plantations," he said.

Of the provision guaranteeing liberty of conscience, the King remarked that it "is practiced in the proprietaries"; and it was the only section which he seems to have affirmatively approved, although there were other important provisions which he did not explicitly disapprove.

The view of the legislative function contained in the New York Charter of Liberties is Roman, not Saxon. It recognizes the joint possession of this power by the Executive and his Councillors and the People, corresponding to the old Roman Executive, Elders and Burgesses. Some of the colonists of New York had experienced oppression at the hands of the people of New England. Also, the evils of executive and of parliamentary supremacy had each been made manifest, in turn, in England. Hence, it was thought to guard against tyranny of majorities as well as of rulers, by providing checks against both. It was thought that ancient and vested rights would be best preserved by associating the Executive and his advisers with the representatives of the people, and giving to them jointly the supreme legislative power.

The entire Charter we are considering is a clear and crisp declaration



the province.<sup>10</sup> The act provided that the courts should "not be or remaine Longer in force than for the time and space of Two Years and until the End of the sitting of the next Assembly after the expiration of the said Two Years." Evidently, it was the purpose of the legislators to meet by further legislation any adverse action by the Duke or governor on the Act of 1683.

Unquestionably, the year 1683 was a memorable one in the constitutional and judicial history of New York, for the first General Assembly passed legislation which was destined to have part in all subsequent systems of government of the colonial period. The Charter of Liberties and Privileges although vetoed by King James II, was revived, though not for long, in almost its original form, by William and Mary; and although the Act to Settle Courts of Justice was amended even in Dongan's time, it was not substantially altered, "and in the end became incorporated in the laws of the colony."

The second session of the First General Assembly opened on October 21, 1684. During the next nine days the legislators passed thirty-one acts. The last measure passed in

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of the ancient liberties of all Aryan freemen. The remaining portion reads substantially as follows: "Every freeholder and freeman shall vote without restraint. No freeman shall suffer by judgment of his peers, and all trials shall be by jury of twelve men. No tax, tillage, assessment, custom, loan, benevolence or imposition whatever shall be laid, assessed, imposed or levied, on any of his Majesty's subjects within this province or their estates, upon any pretense but by the act of the Governor, Council, and Representatives of the People in General Assembly met and assembled. No seaman or soldier shall be quartered on the inhabitants against their will. No martial law shall exist. No person professing faith in God by Jesus Christ shall at any time be in any way disquieted or questioned for any difference of opinion." Appended to the charter was a continued bill of customs. Its approval by the Governor was the signal for great rejoicing.—Werner's "Civil List and Constitutional History of the Colony and State of New York," 1888 ed., pp. 49-52.

10. A copy of this act is in the manuscript compilation of the Dongan Laws formerly in the office of the Secretary of State, but now in the State Library at Albany. That the act was received by the Board of Trade on February 17, 1684, appears from the transcript of the journal thereof.—See O'Callaghan's "Documents Relative to the Colonial History of the State of New York," Vol. III, 354, and "Colonial Laws of New York," Vol. I, 125.



that session abolished the Court of Assizes.<sup>11</sup> The Second General Assembly convened in New York on October 20, 1685, and after passing six acts adjourned to meet again in September, 1686. Before that month arrived, however, the political changes had been so momentous that the session was never held.

**Town Courts**—Under the act of 1683, the town courts were to sit on the first Wednesday of every month, the magistrates being three commissioners appointed by the governor. Their jurisdiction extended to actions of debt or trespass, wherein the amount involved did not exceed forty shillings. A trial by jury of the issues joined could be had only at the special request of either side upon payment of the proper cost and charge.

The Mayor's Court of New York had a different status, however; so also did the Mayor's Court of Albany, from the year 1686. They had jurisdiction up to twenty pounds.

**Courts of Sessions**—The Courts of Sessions were substantially as under the Nicolls Code, a court being established in

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11. An Act for the confirming all Judgments and proceedings in the former Courts, taking away the General Court of Assizes.

"And forasmuch as the General Court of Assizes, heretofore held annually in this Province, is of great charge and Expense to the same, and by reason of the Great number of the members thereof nott so fit & capable to heare and determine matters and Causes of Civil nature, usually brought to the said court; Bee itt enacted by the Authority of this Present Assembly; That the said Court called the General Court of Assizes, and all Jurisdiction, power and Authority belonging unto or used and exercised in the said Court or by any the Judges, Ministers or members thereof, bee from the first day of November next ensuing clearly and absolutely dissolved, taken away and determined, and that from and after the said first day of November next ensuing, Neither Judge, Justice, Member or Minister of the said Court whatsoever shall have any power or Authority to heare, Examine or determine any matter or thing whatsoever in the said court called the General Court of Assizes, or to pronounce or deliver any Judgment, Sentence, Order or decree, or to do any Judicall or Ministeriall act in the same Court; provided always that all actions, suits or Complaints now pending in the said Court of Assizes either by Bill, Plaint, Declaracon, appeale, review, by Peticon to the Governor and Councill, or any other ways or means whatsoever, shall be ended determined and finished by the High Court of Chancery."—See "The Colonial Laws of New York," Vol. I, 172.

each county, and constituted by three or more justices of the peace, who met at least twice each year, except that in the city of New York the sessions were quarterly, and in Albany three times a year. All trials were to be by jury.

“In the city of New York, sessions were to be held by the mayor and aldermen; like the former Court of Sessions, it had both criminal and civil jurisdiction, without limitations as to amount, and all cases were triable by jury. Other officers of court were a clerk, known as the *Clerk of Sessions*, and a marshal and crier.”

**Court of Oyer and Terminer**—The Court of Oyer and Terminer and General Gaol Delivery, which was to be in fact a circuit Court of Assize, had power to function with one judge of the Supreme Court and four or more justices of the local Sessions Court. Governor Dongan appointed two circuit judges, Matthias Nicolls and Thomas Palmer, both of whom were barristers. It would, therefore, seem that there were two circuits, or judicial districts. A regular term of this court was held in each county twice in every year; and when on a circuit, the sheriff of the county would meet the judge and his attendants upon his entrance into the county town and conduct him to his lodging, which, according to the etiquette of the time, was not to be the same as that occupied by the lawyers. In New York City the mayor and aldermen, to the number of four, sat with the circuit judge; and under the new city charter, the recorder also was seated in the local Court of Oyer and Terminer. The Court of Oyer and Terminer had unlimited jurisdiction of criminal and civil cases, and generally acted as an appellate court.

**Court of Chancery**—The Court of Chancery, which became the highest court of the province, assumed some of the functions of the Court of Sessions of the Nicolls administration. Under the old system “proceedings in equity were conducted by bill and answer. Witnesses were examined according to



the manner of the Court of Chancery in England at that time, and all suits in equity were determined by the court without the intervention of the jury."<sup>12</sup> By the act of 1683 the Court of Chancery was to be composed of the Governor and his Council, the Governor having power to depute or nominate in his stead "a Chancellour and be assisted with such other persons as shall by him bee thought fitt and convenient."<sup>13</sup> The act creating the Court of Chancery gave only "a high-sounding but hated name to a body which, from the first, had assumed chancery jurisdiction"; the only effect of this act was in giving legislative sanction to a jurisdiction which had hitherto been exercised as a prerogative of the Crown. And, despite opposition, it remained so constituted to the end of the colonial period. "From first to last the court was the most unpopular judicial establishment in the colony." This can be well believed; but it had a vital purpose, and the successive Governors determinedly sustained it substantially as originally purposed and constituted. The Assembly of 1691 by Act of

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12. The earliest record of a proceeding in chancery is cited by Murray Hoffman in "A Treatise Upon the Court of Chancery" It was during the rule of Governor Andros.

"To the Right Honorble Major Edmond Andross, Esqr, Left & Governr Generall of his Royal Highness, his Territoeries in America. Thomas Wandall, Complainant. Oliffe Stephens, Deft. And the deft. to ye Complaints bill humbly answereth yt alt 30 years last past. The Land in questione was by ye authority then in being—Ordered for a Lane or Alley—abt 16 years within sd time aforementioned—The 2d ground by Orde of the Burge Masters of this City was exposed to sale—; thereupon this Complaint and deft joyntly purchased ye same—; & soon after made eqwale divisione thereof; upon the sd ground this complaint hath built; & ever since the purchase enjoyed e quietly possessed ye same—And all soe this deft hath until ye 7th Novembe, 1676,—by virtue of his Title aforesd & his quiett possessione he humblt conceives, makes him an undoubted right and ye Mutual agreemt upon partitione as aforesd being confirmed by a judgment given In the Mayors C. T. as p record appeers: In tende Consideracon whereof humbly prays yr Honr and honble Bench to take the ye into yr Grave Consideracon & be pleased to grant judgmt according to Equity & Justice, and this deft as in duty bound shall pray &c (Endorsed) The Answer. Tho Wandall plf, Oloff Stevens, deft, 1677, put off by the Go."—Chester's "Legal and Judicial History of New York," I, 293.

13. "There shall bee a Court of Chancery within this province, which said Court shall have power to heare and determine all matters of Equity



May 6,<sup>14</sup> continued the court for seven years, after which "the only authority for the exercise of equity jurisdiction by the successive governors was by ordinance or executive order." The "Court of Chancery as held by one man, and that man generally a stranger to the country, and always the immediate representative of the Crown, was especially obnoxious to public prejudice," wrote Butler in his "Outline of the Constitutional History of New York. Bellomont wrote to the Lords of Trade in 1700: "There is a great want of a Court of Chancery here, but no body here understanding it rightly I delay appointing one till the Judges and Attorney-Generals come from England." In January, 1701, he again wrote: "I am extremely importun'd to erect a court of chancery, many people being like to be ruin'd for want of one. I shall therefore very soon settle that court tho' I should make no decrees till the arrival of the judge and attorney-general." A court was erected in that year, but the objectionable conditions remained, the royal prerogative continuing to be the dominating factor.<sup>15</sup> Lord Cornbury took heed of the popular opposition

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and shall be Esteemed and accounted the Supreme Court of this province. And be it further Enacted That the Governor and Council bee the said Court of Chancery, and hold and keep the said Court; And that the Governour may Depute or nominate in his stead a Chancellour, and be assisted with such other persons as shall by him bee thought fitt and Convenient. Together with all necessary Clerkes and other officers as to the said court are needful." "Colonial Laws of New York," I, 128.

14. "Be it further Enacted by the Authority aforesaid that there shall be a Court of Chancery within this Province, which said Court shall have power to heare and determine all matters Equity and shall be Esteemed and accounted the High Court of Chancery of this Province: And Be it Further Enacted by the authority aforesaid that the Governor & Council be the said High Court of Chancery, and hold and Keep the said Court; and that the Gouvernour may Depute, Nominate & Appoint in his Stead A Chancelor, and be assisted with such other Persons of the Council as shall by him be thought fitt and Convenient, together with all Necessary officers, Clerks and Registers as to the said High Court of Chancery are needful."—*Ibid*, I, 230.

15. It was left for Bellomont's successor, Lieutenant Governor Nanfan, finally to erect this court. In June, 1701, he ordered the Court of Chancery to be held, commencing the first Thursday in the following August, the sessions to be monthly thereafter. The court consisted of the governor,



to this court when he became Governor, for on June 13, 1703, he suspended its sessions. However, on November 7, 1704, he had to reëstablish it, and did so by ordinance. Thus it had not even the semblance of sanction by a popular body, and

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two or more members of the council, and a register, clerks, and masters, who were appointed.

It was the undeviating policy of the Crown to refuse to give up its prerogative claim to equitable jurisdiction, or to submit it to such limitations as a provincial legislature might see fit to impose. On the other hand, the general ground of opposition to the court was that, being founded on mere prerogative, personal liberties were subject, not to law, but to the conscience or disposition of the royal representative; they were made precarious by the extortionate fees of officers who were not under control of the provincial Assembly, by the excessive bail exacted in cases of *ne exeat* writs, and by various delays of justice through "the manifold contrivances of lawyers, by their voluminous bills of complaints, answers, and dilatory pleas," which were countenanced by the court officers. One specific and pronounced cause of opposition to the court grew out of the question of land rents. Upon the sale of land by the Crown, quit rents were reserved, and were allowed to accumulate in arrears. The Court of Chancery was a medium for collecting these rents. Small land holders thus had personal reason for hostility to the court, and many great land holders feared lest the court should invalidate their titles to land which they had received in grants from corrupt governors.—Chester's "Legal and Judicial History of New York," I, 295-96.

15. Until the end of the Dutch domination, and even long afterward, the governors of the colony counted it a right to preside in Court, and to order the affairs of justice, and this was a particular embarrassment of the cause, not only because they knew no law, but also because some of them seem to have been fitter subjects for its discrimination than interpreters of its principles. Indeed, most of them were adventurers, pure and simple; men whose careers had been "unfortunate" on the other side, and who had come to the New World to begin again.

In addition to their salary, the governors claimed and received a large income in fees or perquisites for arranging patents or grants of land, and, on account of this malfeasance, the Crown was constantly defrauded, while they, its servants, set worthy examples to the ring politicians of later generations. Yet, while their understanding of law was extremely "liberal," there was always the fear of that dreadful bogey the "reformer," who might some day disturb the peace of the colonists and instigate proceedings in the name of the Crown to void the grants thus fraudulently made. This fear was the real upshot of the almost frantic opposition of the colonists to the establishment of the Court of Chancery, or any court of equity whatsoever, for had some wealthy Knickerbocker been sued to make a test case, it is probable that the majority would speedily have found themselves *sans* house, *sans* land, *sans* patent, *sans* everything; and there had been fewer vast fortunes to accrue from New York real estate holdings.

This, then, was a bond of sympathy and common cause between colonists and their often rascally governors, which rendered the former only



the opposition to it became more and more radical.<sup>16</sup> In 1727 the Assembly, moved to action by the defeat of its speaker, Frederick Phillipse, in a case in the Court of Chancery wherein Governor Burnet sat as Chancellor, resolved: "That the Erecting or Exercising in this Colony a Court of Equity or Chancery (however it may be Termed) without Consent in General Assembly is unwarrantable, and Contrary to the laws of England, and a Manifest oppression and grievance to the subjects and pernicious Consequence to their Libertys and property." <sup>17</sup> The answer of the Governor and Council was

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too thankful to bear any forms of tyranny rather than the dread assizes of the Court of Chancery.—"History of the Court of Common Pleas of City and County of New York," (James Wilton Brooks), p. 17-18.

16. Opposition to the court was so pronounced that when Cornbury arrived he suspended its sessions and directed an investigation into the complaints regarding it. But in 1704 he reestablished it by ordinance, and it continued from that time until the breaking out of the war for independence. Cornbury made some changes in the conduct of the court, especially in lowering the fees, but the hostility to it became more and more radical, and in 1708, just after Lovelace had come out as governor, the Assembly passed a resolution declaring the establishment of such a court by the government was illegal, unprecedented, and dangerous to liberty. During the time of Lovelace and Ingoldesby the court fell into disuse. In 1710 Hunter revived it, assuming the office of chancellor and appointing two masters, two clerks, an examiner and a register. As a result of this action by Hunter, hostility to the court again became outspoken. In November, 1711, the Assembly resolved that "the erecting a court of equity, without consent in general assembly, is contrary to law, without precedent, and of dangerous consequence to the liberty and property of he subjects. The lords of trade answered the declaration by asserting the right of the Crown, and for sixteen years thereafter the court was continued without serious opposition.—*Ibid*, I, 296-97.

17. "Die Sabbath, 25th November, 1727.

"Coll. Hicks from the Committee of Grievances reported that, as well as by the Complaints of several people as by the General Cry of his Majesty's subjects Inhabiting this Colony, they find that the Court of Chancery as Lately assumed to be Sett up Here renders the Libertys and properties of the said Subjects extremely Precarious, and that by the violent measures taken in & allowed by it some have been ruined, others obliged to abandon the Colony, and many restrained in it either by Imprisonment or by Excessive bail exacted from them not to depart even when no manner of suits depending ag't them and therefore are of opinion that the Extraordinary proceedings of the Court and Exorbitant fees and charges Countenanced to be Exacted by the Officers and Commissioners thereof are the greatest grievance and oppression this colony has ever felt, and that for



that the resolutions were "unwarrantable and highly injurious to his majesty's prerogative." Thereafter, however, the Governors were reluctant to sit as chancellors, Historian Smith writing: "The wheels of the Chancery have ever since rested upon their axis—the practice being condemned by all gentlemen of eminence in the profession."<sup>18</sup>

However, going back to the time of Governor Dongan, and to the Act of 1683 establishing this court, it appears that John Spragg was appointed Master of the Rolls, with John Knight and James Graham as clerks. The commission of Secretary Spragg as Master of Rolls was issued on December 29, 1684; and at the same time he became register. The only other

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removing the fatal consequences thereof they had come to several resolutions which being read were approved by the House and are as follows:

*Resolved*, That the Erecting or Exercising in this Colony a Court of Equity or Chancery (however it may be termed) without Consent in General Assembly is unwarrantable and Contrary to the laws of England and a Manifest oppression and grievance to the subjects and pernicious Consequence to their Libertys and propertys.

*Resolved*, That this House will at their next meeting prepare and pass an Act to declare and adudge all orders, ordinances and Devises and proceedings of the court so assumed to be Erected and Exercised as above mentioned to be Illegal, Null and void by Law, and of right they ought to be.

*Resolved*, That this House will at the same time take into consideration whether it be necessary to Establish a Court of Equity or Chancery in this Colony in whom the Jurisdiction thereof ought to be vested and how far the powers of it shall be prescribed and Limited, examined and Compared with the Journal of the General Assembly."

18. Attacks continued to be made upon the governor's exercise of equitable jurisdiction, and in 1735 the Assembly, taking into consideration the action of Governor Cosby in a land case where a plea had been interposed to his jurisdiction, adopted a resolution: "That a Court of Chancery, in this province in the hands, or under the exercise, of the governor without consent of General Assembly is contrary to law, unwarrantable, and dangerous consequence to the liberties and properties of the people." When, in 1737, the Assembly passed a bill "for establishing and Regulating Courts to Determine Causes for Forty shillings & under," it again called the attention of the governor to the general desire of having all courts of general jurisdiction established, and their several jurisdictions and powers appointed and limited, by the Legislature, and not left any longer to the uncertain exercise of prerogative power. This representation of the Assembly had little effect, and from this time to the Revolution the Chancery was not often attacked in the legislative body, but the business transacted in it gradually became small and unimportant.—Chester's "Legal and Judicial History of New York," Vol. I, 298-99.



appointment as Master of Rolls during the colonial period was that of James Jauncey, Jr., in 1774; and no Governor is listed as Chancellor after 1701, when the office of *Master* was created. Still the Court of Chancery functioned throughout the colonial period, and was recognized by the Constitution as being then in existence. The court was, of course, necessary, the only element of it that was chronically opposed being the royal prerogative.

**Municipal Courts of New York City**—On November 9, 1683, the New York magistrates (the mayor and aldermen) petitioned<sup>19</sup> Governor Dongan to confirm, by a charter from the Duke of York the “ancient customes, Priviledges and Immunityes” granted to the city by Governor Nicolls in 1665. They further prayed that the municipal government of New York be patterned more fully after that of London, by the appointment of a recorder, to assist the mayor in his court functions.<sup>20</sup>

New York City at that time was not a very important municipality, if compared with Boston; still it was the capital of the little<sup>21</sup> province over which Governor Dongan had au-

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19. In this petition it was asked that the city be divided into six wards, and the freeholders of each ward be empowered to elect an alderman and appoint a common councilman, with other local officers.—3 “Colonial Documents,” 339.

20. “that the Recorder bee appointed by the Governor and Council who shall be Judge of the City and Corporation and be aydeing and assisteing to the Mayor and Aldermen & Comon Council in all matters that relate to the well beinge and supporte thereof.”

And further that “a Sheriff bee annually appointed by the Governor & Councel.”—O’Callaghan’s “Documents Relative to the Colonial History of the State of New York,” III, 338.

21. The Province of New York contained only about six or seven thousand inhabitants in 1674, when Andros took over the government from the Dutch governor, Colve. The population of New England at that time was not less than one hundred and twenty thousand. New York was the best natural harbor, but at that time any small and convenient harbor could accommodate the small vessels then upon the seas. The potentialities of New York seemed then to be as obvious as a century later, but its facilities were not generally needed, the bulk of settlement being in New England. The New York province increased in population about one-



thority; and he was disposed to favor it in every possible way. He granted the petition "in almost every particular," ordering that it be substantially put into operation without delay, although final decision could not be made "until such times as his Royal Highnesses pleasure shall be further known therein." On January 14, 1684, Governor Dongan commissioned James Graham as recorder, and on the next day all of the new magistrates went in a body to the Fort, where they were sworn into office by the Governor and Council, after which they returned to City Hall and opened court, the recorder taking his seat on "ye right hand of ye mayor." John Tudor had received commission as sheriff, and John West as clerk of the city of New York. James Graham was destined to hold the office of recorder for seventeen years, with one slight interruption.

The legal status of New York Province, of course, underwent a change in 1685, when James, Duke of York and Al-

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third during the period 1674-77, but even a century later New England had a population nearly three times as great as that of New York. It was not until the colony became a state that the pendulum of emigration and settlement swung New Yorkward. In 1678 Andros reported that he could muster 2,000 militia men; that the fort in New York City had forty-six mounted guns; that Albany had twelve guns, and Pemaquid, in Maine, 7 guns. The colony then had twenty-four villages or towns, and its estates had a total valuation of \$150,000. The registered shipping totalled fifteen vessels, of an average tonnage of 100 tons, with an occasional arrival from England. The yearly imports amounted to about \$50,000. A merchant deemed a substantial citizen was one who owned a thousand or even five hundred pounds; a wealthy planter would come into that category when possessed of £250. New York had no beggars, but no plutocrats. Its chief exports were flour and peltries. New York City tried to get and for some years enjoyed a monopoly in the manufacture of flour, and Albany was the centre of the Indian trade. Governor Dongan must have considered New York an unfortunate province. He complained that New Jersey robbed her of her trade and her settlers; that Connecticut was "as always grasping, tenacious, prosperous at her neighbor's expense," exercising an evil influence over the New York towns of Long Island, the disaffected inhabitants of which would prefer to carry their oil to Boston and their whalebone to Perth, than to their own capital. While the population of New York had been increased by Huguenot immigration, Governor Dongan in 1687 wrote that "he believed there had not come into his colony within seven years twenty English, Scotch or Irish families."



bany, became King James II; and the issuance of new commissions to all provincial officers became necessary—from Governor Dongan down to the least important commissioned officer.<sup>22</sup> And while the change brought the royal veto of the provincial Charter of Liberties and Privileges, it brought confirmation of municipal charter for New York City in April, 1686, and authorized the issuance of a similar municipal charter in July to create the city of Albany.

The Dongan Charter, as it has ever since been known, provided that the inhabitants of each ward in the city of New York should elect, annually, one alderman, one assistant alderman, and one constable. The mayor, recorder, and sheriff were to be appointed by the Governor, and the high constable by the mayor. The mayor, recorder, and any three of the aldermen, with any three of the assistants, were created a Common Council, which in convention were authorized to pass laws and ordinances for the government of the community. The mayor, recorder and aldermen, or any three of them, of whom the mayor or recorder must be one, were authorized to hold within the city a Court of Common Pleas, on every Tuesday, for the trial of all debts, trespasses, ejectment or other personal action, according to the rules of the common law and the acts of the General Assembly of the province; and it further provided that the mayor and recorder, or three or more of the aldermen (not exceeding five) should be justices of the peace, and any three of whom the recorder or the

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22. New York, no longer the private domain of a subject, now became a province of the crown. Theretofore, in respect to its local government, and the appointment of officers to administer it, New York was a county palatine like the counties of Chester, Durham and Lancaster, in England, in which from a remote period down to 27 Henry VIII, c. 24, the Earl of Chester, the Bishop of Durham and the Duke of Lancaster, respectively, had *jura regalia* as completely as the King in his palace, and consequently administered justice within their respective counties, by judges appointed by themselves and not by the Crown. But it was the King sitting in council who was now the immediate source of all power and new commissions to the provincial officers became necessary.—Redfield's "English Colonial Polity and Judicial Administration, 1664-1776."



mayor should be one, were empowered to hear and determine all manner of petty larcenies, riots, routs, oppressions, extortions, and other trespasses and offences of the city.<sup>23</sup>

The charter most satisfactorily separated the executive from the judicial functions of the city magistrates. Formerly, the Mayor's Court had held jurisdiction in all phases of the municipal affairs of New York, legislative as well as judicial matters coming before the Bench, though the magistrates seem to have accorded their magisterial duties priority in execution, the consideration of municipal affairs being undertaken after the sittings of court, for civil or criminal hearings. The new charter also differentiated between the powers of the local magistrates in civil cases and in criminal. Three tribunals were organized, with the same judicial personnel but with different duties. The tribunals were: the Common Council, the Mayor's Court, which now was to take the name of the Court of Common Pleas and the Court of Sessions;. The authority of the Common Council is fairly clear in its name; the councilmen had power to pass laws and ordinances

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23. "AND FURTHER, I do by these present grant, for an on behalf of his most sacred majesty aforesaid, his heirs and successors, that the Mayor and Recorder of the said city for the time being, and three or more of the Aldermen of the said city, not exceeding five, shall be justices and keepers of the peace of his most sacred majesty, his heirs and successors, and justices to hear and determine matters and causes within the said city and liberties and precincts thereof; and that they, or any three or more of them, whereof the Mayor or Recorder or one of them, for the time being, to be there, shall and may forever hereafter, have power and authority, by virtue of these presents, to hear and determine all and all manner of petty larcenies, riots, routs, oppressions, extortions and other trespasses and offenses whatsoever, within the said city of New York, and the liberties and precincts aforesaid, from time to time, arising and happening and which arise and happen, and any ways belonging to the offices of justices of the peace, and the correction and punishment of the offences aforesaid, and every of them, according to the laws of England and the laws of the said Province; and to do and execute all other things in the said city, liberties, and precincts aforesaid, so fully and in ample manner as to the commissioners assigned, and to be assigned, for the keeping of the peace in the said county of New York, doth or may belong.

"AND I DO, by these presents, for and on behalf of his most sacred majesty aforesaid, his heirs and successors, give and grant unto the afore-



for the government of the city; the Court of Common Pleas was the civil court, which held weekly sittings, the mayor, recorder and aldermen having, however, only limited authority in this court; the Court of Sessions, or as it was first known, the Court of Quarter Sessions and as commonly known the Recorder's Court, sat once in every three months, for the hearing of criminal cases. In this court the recorder was the presiding officer, though the mayor and aldermen were associate justices. The recorder was, however, intended to be the permanent city judge, one whose office would not be affected by the annual change of associate magistrates, the mayor and aldermen. To the Recorder's Court also were brought the more important civil actions, just as to the Court of Common Pleas were sent some of the minor criminal cases. It seems that the Court of Sessions and the Circuit Court of Oyer and Terminer overlapped in New York City, and that after a few years one was discontinued in the city.<sup>24</sup>

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said Mayor, Aldermen, and Commonalty of the said city of New York and their successors that they and their successors shall and may have, hold, and keep within the said city and liberties and precincts thereof in every week in every year forever, upon Tuesday, one Court of Common Pleas, for all actions of debt, trespass upon the case, detinue, ejection and other personal actions; and the same to be held before the Mayor, Recorder, and Aldermen, or any three of them whereof the Mayor or Recorder to be one, who shall have power to hear and determine the same pleas and actions, according to the rules of the common laws and acts of general assembly of the said province."

24. It (the Court of Sessions) continued in existence three years, but by that time it was apparent that the mayor's court and the oyer and terminer were sufficient for the despatch of the legal business of the city.

The circuit of the Oyer and Terminer was held in the city twice a year, and as the Mayor's Court had equal jurisdiction with the Court of Sessions, with the advantage of sitting more frequently, there was comparatively little for the Court of Sessions to do. It was not, therefore, embraced in the general provision made by the charter, nor yet was it rejected. The act creating it had been passed by the General Assembly, had been signed by Dongan before he granted the charter, and subsequently ratified by James. Consequently, it was not in Dongan's power to repeal it, but, with the general acquiescence of all parties, the court seems to have been dropped, and the Quarter Sessions, as a court of exclusive criminal jurisdiction, substituted in its stead.—Chester's "Legal and Judicial History of N. Y.," I, 214, 215.



**Provincial Law Officers**—Besides the two judges of the Court of Oyer and Terminer, Matthias Nicolls and Thomas Palmer, regarding whose service in this court Governor Dongan wrote in commendatory terms, stating that "Their methods have been by arbitration and such other mild management, that where there were ten suits formerly, there is but one now," the Governor followed up his appointment of a recorder for New York City by another innovation on the same day, in the appointment of Thomas Rudyard as attorney-general of the province. Rudyard, who had practiced as a lawyer in London, was a Quaker and had been closely associated with William Penn. Indeed, he was one of the twenty-four proprietors of East Jersey, who succeeded, by purchase, to the provincial rights of the Carterets in March, 1682-83. Rudyard was the first Lieutenant-Governor of East Jersey under this purchase, his authority being equivalent to that held by Dongan in New York. But in the next year he was dismissed, and came over to New York. He was attorney-general for only a year, his successor being Recorder Graham, who had been clerk of the Court of Chancery. These were all professional lawyers, as was also John Tudor, who was appointed sheriff of New York, and as, presumably, was Isaac Swinton, who succeeded James Graham as clerk of the Court of Chancery. And, presumably, they all came within the requirement set by King James for all public officers: "That they bee persons well affected to Our Government," this being his particular admonition to Governor Dongan when, in 1686, he sent him a new commission, empowering the Governor anew "to erect courts of law, and if he should consider that necessary, to appoint judges, justices of the peace, and other officers."

The Governor does not seem to have made much change in 1686, under his new authority, other than to grant a new charter to New York City and one to Albany, and to establish a Court of Exchequer. The Governor followed the plan of

his predecessors in retaining for himself the functions of a surrogate or probate judge for the province, and "though schooled in the profession of arms and not of law, seems to have given general satisfaction."

**Court of Judicature**—In a report which he made on February 22 1687, to the Committee of Trade, Governor Dongan referred at length to this new court of exchequer, which he called the Court of Judicature.<sup>25</sup> Its purpose was to determine all royal revenue cases. There was good reason for its erection, it seems, for "great difficulty had been experienced in enforcing payment of taxes and revenue, because of the imperfect organization of courts distant from New York." Several of the tax collectors, or deputies, were themselves defaulters, the government in one case, indeed, losing the whole of the revenue from one district in this way, the deputy collector, the bonds offered by the deputy proving to be worthless.

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25. "The Courts of Justice are most Established by Act of Assembly and they are:

"1. The Court of Chancery, consisting of the Governor and Council, is the Supreme Court of this Province, to which appeals may be brought from any other Court.

"2. The Assembly finding the inconvenience of bringing of ye peace, Sheriffs, Constables & other persons concerned from the remote parts of this Government to New York did instead of the Court of Assizes, which was yearly held for the whole Government of this Province erect a Court of Oyer and Terminer to be held once every year within each County for the determining of such matters as should arise within them respectively, the members of which Court were appointed to bee one of the two judges of this province assisted by three justices of the peace of that County wherein such Court is held. Which Court of Oyer & Terminer has likewise power to hear appeals from any inferior Court.

"3. There is likewise in New York & Albany a Court of Mayor & Aldermen held once in every fortnight from whence their can be noe appeal unless the Cause of Action bee above the value of twenty pounds, who have likewise privilege to make such by-Laws for ye regulation of their own affairs as they think fitt, soe as the same be approved of by ye Govr. & Council. Their Mayors, recorders, Town-Clerks & Sheriffs are appointed by the Governor.

"4. There is likewise in every County twice in every year (except in New York, where it's four times, & in Albany where its thrice) Courts of Sessions held by the Justices of ye peace for the resp'ive Countys as in Engld.



Still, if such a case were submitted to a jury drawn from the collector's own district, their sympathies, the Governor thought might defeat the ends of justice. Therefore, the new court was to be composed only of the Governor and members of his Council, who would hold monthly meetings in New York. And in it were to be determined all suits between the King and the inhabitants regarding lands, titles, rents, profits and revenues. It was another of the unpopular courts,<sup>26</sup> but does not seem to have functioned long, the Supreme Court in later years generally having cognizance of all matters in exchequer.

**Extended Jurisdiction of Governor and Council**—Further articles of law reform under a commission sent out to Dongan, writes Scott, enlarged the appellate jurisdiction of the courts. "Appeals were allowed in cases of error, to the Governor and Council, where the amount involved exceeded one hundred

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"5. In every Town wth ye Government there are 3 Commissioners appointd to hear and determin all matters of difference not exceeding the value of five pounds which shall happen within the respective towns.

"6. Besides these, my Lords, I finding that many great inconveniences daily hapned in the managemt of his Mats (Majesty's) particular concerns within this Province relating to his Lands, Rents, Rights, Profits & Revenues by reason of the great distance betwixt the Cursory settled Courts & of the long delay which therein consequently ensued besides the great hazard of venturing the matter on Country Jurors who over and above that they are generally ignorant enough & for the most part linked together by affinity are too much swayed by their particular humors & interests, I thought it fit in Feb. last by & with ye advice & Consent of ye Council to settle and establish a Court which we call the Court of Judicature (Exchequer) to be held before ye Govr. & Council for the time being, or before such & soe many as the Govr. should for that purpose authorize, commissionat & appoint on the first Monday in every month at New York, which Court hath full power and authority to hear, try & determin Suits, matters and variances arising betwixt his Maty (Majesty) & ye Inhabitants of the said Province concerning the said Lands, Rents, Rights, Profits and Revenues.

"The Laws in force are ye Laws called his Royal Highnesses Laws and the Acts of the General Assembly, the most of which I presume yr Lops (Lordships) have seen & the rest I now send over by Mr. Sprag to whom I refer yr Lops in this point."—See "New York Entries," Vol. II, p. 1; O'Callaghan's "Documents Relative to the Colonial History of New York," III, 389.

pounds; in case the sum in litigation was in excess of three hundred pounds, the appeal could be taken to the King and Privy Council." Thus, the judiciary powers of the Governor and Council were threefold, having equitable jurisdiction, sitting as a Court of Exchequer, and constituting the final Court of Appeals in the province. At this period the Mayor's Court at Albany sat fortnightly, from which appeals might be taken from judgments in excess of twenty pounds.

In the last years of the Dongan administration, the Court of Oyer and Terminer was summoned to sit by the special commission, when the need arose. The writ issued named the judge and justices of the peace, and at the close of the term or circuit, the written pleadings in each case, with all other relative papers—orders, records of judgment and a complete record of the minutes—were attached to the commission, and the whole deposited with the secretary of the province, for filing as the official record.

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26. Its unpopularity was assured from the beginning, for the people were not content to have the causes in dispute between themselves and the government left to the arbitrary decision of the representative of the government. One of the charges brought against Leisler in 1690 rested upon this point:

"That by his instruments he hath and doth exact (by pretense of prerogative and for the use of the Crown) Customs Impositions and Excise never granted to the Crown; which that he might the better accomplish, he hath taken upon him to erect a Court of Exchequer, consisting as members of said Court, viz.: Samuel Edsall, Benjamin Blagg, Johanes Provest, Hendrick Jansen, John Cowenhoven, who begin their session on the 20th January, the 18th of the same month several of the Inhabitants received summons to appear at this unusual court on the day above said, to give their reasons why they would not pay the monies they were indebted to the King for Custom."

In the royal instructions to the governors who immediately succeeded Dongan were directions to erect a court of exchequer, but none appears to have been established. By the Assembly Act of 1691, the Supreme Court had cognizance of all matters in exchequer as in the Court of Exchequer in England. The first exchequer-chamber business attempted in the Supreme Court was made by Chief Justice Attwood, shortly after his arrival in 1701. Attwood and Attorney General Sampson Shelton Broughton had been sent out from England to assist Governor Bellomont to suppress the piracy which was largely engaged in by the merchants and traders of New York. Attwood had a commission as Judge of Admiralty for New



Under the Nicoll's Code, or the Duke's Laws, matters of probate were dealt with in the Courts of Sessions in the ridings, or in the municipal courts. In exceptional instances, Governor Andros gave his judgment upon the construction of a will, and sometimes granted letters without any proceedings in court; but these matters were generally left to the inferior courts. In 1686, under Dongan, the Governor assumed further responsibility,<sup>27</sup> these methods being instituted in the Prerogative Court of 1691, to which reference will later be made.

There is one other court of the Dongan period to which reference should be made, that which exercised admiralty jurisdiction.

**Court of Admiralty**—The first English governors dealt with admiralty proceedings, as matters within their own prerogative, and under their general commission. In 1678 the Duke of York strengthened the authority of the Governor in

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England, New York, and New Jersey, in addition to the chief justiceship of New York. Soon after his arrival he took up the case of a vessel which, seized for lack of registry under the Navigation Acts, had been discharged by the Admiralty judge. Although it was desired to prohibit, by writ, the execution of the decree, discharging the vessel until the admiralty proceedings could be reviewed, no court in the province appeared to have an unquestioned right to issue such a writ. The chancery jurisdiction of the governor was questioned, the Supreme Court was claimed by the lawyers to be a court of law only. Attwood concluded that the Supreme Court, sitting as a court of exchequer, had the required power and thereupon, assuming to sit as a baron of the exchequer, he directed "a suggestion to be exhibited to it for a prohibition to the Court of Admiralty upon its sentence in that matter." But as "one of the persons designed for a judge in the Supreme Court had given the obnoxious sentence in favor of the ship," and the other was a merchant who might be concerned in interest, the governor suspended the granting of their commissions till this matter should be over in the Supreme Court, and empowered Attwood alone to determine the matter. Notwithstanding the owners of the vessel, "Men of good estate," as they were called, appealed directly to the King, the Chief Justice proceeded to try the Crown's claim to a forfeiture. The captain refused to appear, but on the facts found a forfeiture was declared, under which the vessel was sold at public auction. It does not appear that Attwood's exercise of equity jurisdiction in this instance was followed as a precedent by any of his immediate successors. Exchequer matters were heard at the regular terms of the Supreme Court. When, however, as



this respect by giving him a special commission to act as vice-admiral "throughout the entire colonial government." At the same time Governor Andros was authorized to appoint "a Judge, Register and Marshall of the Admiralty."<sup>28</sup> Andros did not immediately act in the matter, contenting himself by issuing special warrants as formerly, for the trial of admiralty cases. Many cases of this character were left to the Mayor's Court of New York City for hearing and determination. In practice it became evident that this court was the logical tribunal; therefore, on October 5, 1678, Governor Andros took his personnel for a Court of Admiralty from the officials of the municipal court. He appointed the Mayor of New York, Stephen van Cortlandt, to be Judge of Admiralty, and decreed that his assistant justices should be the aldermen of the city. To complete the Court of Admiralty he appointed City Clerk William Leet to be Register of Admiralty, and Sheriff Thomas Ashton to be Marshal of Admiralty. It was planned

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frequently happened, the ordinary business of the court consumed the full term, the exchequer matters were taken up at the conclusion of the regular sessions. Soon the exchequer business accumulated so that it could not be disposed of in regular terms, and in April, 1702, Lieutenant-Governor Nanfan ordered separate terms of the Supreme Court for the determination of these cases. The practice of holding these special terms did not long continue, and there was very little, if any, exchequer proceedings until in 1733 Governor Cosby, by his Attorney General, filed a bill in the Supreme Court as a court of exchequer against Rip Van Dam. In 1734 public feeling in the colony against exchequer proceedings was further intensified by the celebrated trial of John Peter Zenger, charged with seditious libel. After the trial and acquittal of Zenger, proceedings of importance were had on the exchequer side of the Supreme Court during the colonial period. In 1742, during the administration of Lieutenant-Governor Clarke, the Assembly passed an act for the regulating of the payments of quit rents and the partition of lands. This act gave jurisdiction to the Supreme Court. As Clarke expressed it in a letter to the Lords of Trade: "a Court of Exchequer is in effect by this act established, whereas the uncertainty arising from the different opinions of lawyers on the legality of such a Court without an act to countenance it, was one principal Cause of the unhappy animosities that a few years ago miserably divided the people and had almost ruined the place. The subject of the reestablishment of such a court continued to be agitated by the successive royal governors. As late as 1766, Governor Moore, writing to the Earl of Dartmouth, one of the Lords of Trade, declared his opinion that such a court was necessary



that the outgoing mayor of New York City should thereafter be *ex officio* Judge of Admiralty, with the several other city officials presumably also serving the court in their respective *ex officio* capacities. In this way Thomas Delavall succeeded Van Cortlandt in 1679. But the sequence seems to have ended there, for the next Judge of Admiralty appointed was Lucas Santen, in 1683; and he was then the collector of the port not mayor, of New York. In the next year Santen was succeeded as judge by John Palmer, who had sat in the first General Assembly representing Westchester, and in 1683 was sheriff of Richmond, also a member of the Governor's Council. His successor in 1686 was Circuit Judge Matthias Nicolls. The next register after William Leet was William Nicoll, who was appointed in 1683. He was also clerk of Queens County in that year, and later became a member of the Governor's Council. John Spragge, who succeeded him in 1684, was the clerk of Assembly in the previous year, and also provincial secretary; and in 1684 he was commissioned Master of the

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and added: "It is a Court much dreaded by the Inhabitants here, and one which they do not wish to see established among them, as it must necessarily bring to light many dark transactions which have been committed against the Crown, but as there are no salaries appointed for the Executive Officers, it will be impracticable to obtain anything of the kind from the Legislature here, for the reason above mentioned. Answering this communication, the Lords of Trade, conceding the importance of establishing such a court, gave their opinion that "It is a consideration of too great importance to be hastily taken up." And it appears never to have again been taken up.—Chester's "Legal and Judicial History of New York," Vol. I, pp. 299-303.

27. The Courts of Sessions and the mayor's courts exercised the same functions as before, but the Governor and the Secretary of the Province also took proof of the execution of wills and directed the inventory and appraisement of estates. The scope and authority for this procedure was clearly indicated in 1691, under Lieutenant-Governor Ingoldsby, when a clause in all letters granted declared that the hearing of accounts, the granting of probates, the discharge of executors and all cognate matters belonged to the governor and not to the inferior judges.

Wills were proved by the Secretary, and he annexed a certificate that "being thereunto delegated" the will had been duly proved before him. Then an authentication, in the name of the governor, in the form that continued in use down to the time of the Revised Statutes, "that the will had been proved, approved, and allowed," under the prerogative seal, was annexed,



Rolls of the Court of Chancery. Thus, it appears that the officials of this court, under Governor Dongan, were very near to the government. Another office in this court seems to have been created by Governor Dongan, who appointed John Tudor advocate-general in 1684. In 1700 this became the *ex officio* responsibility of the attorney-general.

Lord Cornbury, writing to the Lords of Trade in September, 1702, stated that his inquiries led him to believe that no "regular Court of Admiralty" was established in New York until that by Colonel Fletcher about 1694.<sup>29</sup> But the "New York Civil List" records the names of twelve who were Judges of the Admiralty before that year, also seven appointments as register, and six as marshal. So the court must have been operating when needed earlier than 1694.<sup>30</sup> And Governor Dongan seemed to have been determined that it should function efficiently, for he appointed to it some of his most capable officials.

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and the whole was recorded in the Secretary's office—the validity of the record being attested by his signature. Gradually, this department in the Secretary's office assumed great importance, and ultimately it became the Prerogative Office, while its records were named the Registry of Prerogatives. In 1691, the entire institution was denominated the Prerogative Court—"Chester," I, 311, 312.

28. "Whereas it may be convenient for you to be authorized and empowered to appoint a Judge, Register and Marshall of the Admiralty within your governont by reason of its distance from hence (notwithstanding the clause in your commission of Vice Admirall wch reserves the nomination of them to myself). These are therefore to authorize and empower you, and I hereby authorize and empower you from time to time dureing the vacancies of the said places to nominate, constitute and appoint the Judge Register and Marshall of the Admiralty aforesd to continue dureing my pleasure only. Given under my hand and seale at St. James's ye 20th day of May, 1678."

29. "I have made the best enquiry I can, and find that the first time there was a regular Court of Admiralty here it was established by Coll. Fletcher by virtue of a warrant from the Lords of the Admiralty empowering him to appoint a Judge, Register and Marshall for the Court of Admiralty. After that, in my Lord Bellamont's time there was a commission from the Lords of the Admiralty appointing Coll. Smith Judge of the Admiralty heré, and since that Mr. Atwood brought over with him a Commission from the Lords of the Admiralty constituting him Judge of that Court."—See O'Callaghan's "Documents Relative to the Colonial History of the State of New York," Vol. IV, 1000.



Governor Dongan has been described as "a good New Yorker." He certainly was one of the most liberal-minded Governors New York had during the colonial period. He had to guard the royal prerogative, of course; yet his actions as Governor do not seem to indicate that he was as thoroughly conscious as was his successor, Andros, that "Liberty is never more agreeable than under a pious King." (*Nunquam libertas gratior extat, quam sub rege pio*), which motto King James II partly incorporated in the seal of the reconstituted New England he expected Andros to consolidate. Dongan was faithful to his royal master, but not less faithful to the interests of New York. He followed the sensible policy of Andros in dealing with the powerful Iroquois nations, and was more successful than his predecessor in checking French influence among the Indians, for, being a Catholic, he was able to call English Jesuits to his aid, to satisfy what religious sentiment the Indian manifested toward Christianity, the symbols of the Church of Rome impressing the natives more than the simple forms of the Protestants. Dongan had many arbitrary royal commands to execute, yet in all of his official acts a tolerant interest in the governed was seen. "The despot's heel was

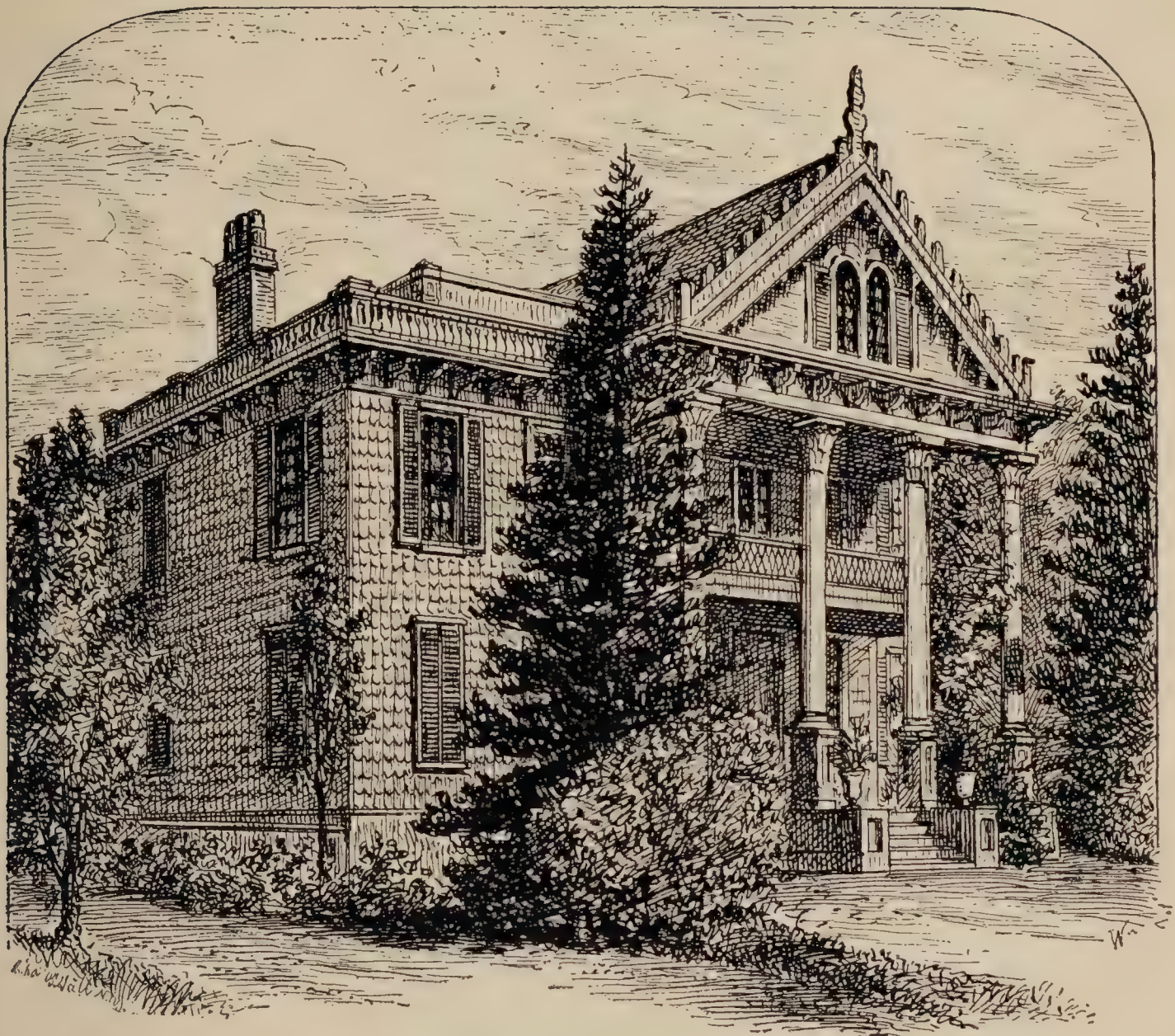
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30. William Smith, who was appointed judge of the court in 1697, described the method of admiralty proceeding in a communication which he made to the Earl of Bellomont. He said that "in the Court of Vice Admiralty here we have in all things as near as possible followed the proceedings of the Admiralty Court in England save only where greater power is given here in the plantations by act of parliament to the Admiralty, than allowed of or practicable in England which hath been duly observed in my administration in that Court in this province."—(See O'Callaghan's "Colonial Doc.," IV, 828).

In 1763, the fourth year of the reign of King George III, an act of Parliament was passed relative to trade in American colonies and plantations. The forty-first section of this act directed:

"That all the forfeitures and penalties inflicted by this or any other act or acts of Parliament relating to the trade and revenues of the said British Colonies or Plantations in America which shall be incurred there, shall and may be prosecuted, sued for and received in any Court of Record or in any Court of Admiralty in the said Colonies and Plantations where such offense shall be committed, or in any Court of Vice-Admiralty which may or shall be appointed over all America (which Court of Admiralty





HOME OF GOVERNOR THOMAS DONGAN (Later Earl of Limerick)  
Site: Port Richmond, Staten Island, square bounded by the Terrace, Dongan,  
and Cedar Streets. Erected 1661; Burned in 1878





not shod with iron, nor was it stamped down too hard." Dongan, a "kindly Kildare Irishman, would not make oppression bitter." His very interest in the people and the province of New York, his desire to make it a more important colony, ultimately brought about his downfall, if his recall can be so considered. He insisently pleaded with the King to authorize the annexation to it of neighboring colonies, so that the province might be restored to its original territorial importance. And his arguments evidently did not fall upon deaf ears, nor materially conflict with the King's own opinions as to the best manner of reorganizing the government of his American colonies, though the King did not centre his plans so much on New York. Indeed, when it became known that New York was to virtually lose its identity in the reorganization of New England under Andros, Dongan probably shared with New Yorkers the feeling of humiliation and chagrin that was general throughout the province—among the Dutch as well as the English inhabitants it would seem.

Thomas Dongan was born at Castletown, County Kildare, Ireland, in 1634, the youngest son of Sir John Dongan, Bart., whose wife was a sister of Richard Talbot, who, as Earl of

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or Vice-Admiralty is hereby respectively authorized and required to proceed, hear and determine the same) at the election of the informer or prosecutor."

This action of the British Parliament created great dissatisfaction among the colonists. The opposition to the king's prerogative in establishing and directing the administration of the courts had developed to an acute point during the preceding half century, and it was no more tolerable to the citizens of the later period than it had been to their ancestors, when the courts were first established in the early years of the century. On October 18, 1764, the General Assembly, giving voice to the popular opinion, petitioned the King in regard to the matter, and also at the same time communicated to the House of Lords and the House of Commons its opinions in regard to the matter. The petition to the King said that:

"The unavoidable delegations of the royal authority which necessarily expose us to the designs of wicked men leave us neither rest nor security, while a custom house officer may wantonly seize what a judge of your Majesty's Court of Vice-Admiralty may condemn in his discretion, or at best restore to the honest proprietor without a possibility of a restriction for the injury."



Tyrconnel, became commander of the military forces in Ireland, and so purged the army of Protestants that when James II stepped down from his throne and went to France, at the coming of William of Orange, it was with the knowledge that in Ireland Tyrconnel had an army which might win for him his kingdom again. Dongan had been reared in the Catholic environment of the Court of France, during the exile of the Stuarts, and had served in the Continental wars, in an Irish regiment of the army of Louis XIV of France. He campaigned in the Low Countries, and in 1674 gained a colonelcy. In 1678 he was offered advancement in the English army, but in the same year was commissioned Lieutenant-Governor of Tangier, Africa, where he remained for two years. In September, 1682, he received commission as Governor of New York, and on June 10, 1686, was recommissioned. Outstanding achievements of Dongan's administration, other than those already noticed, include: his disposal—at least for some time—of the boundary dispute between New York and Connecticut, in 1683; his circumvention of William Penn in 1683, in the matter of extinguishing Indian title to the upper Susquehanna Valley, which territory Penn keenly sought to acquire;

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The communication to the House of Lords said, among other things: "That the amazing powers vested by some of the late acts of trade in the Judges of the Vice-Admiralty Courts, who do not proceed according to the course of the common law, nor admit of trials by juries, one of the most essential privileges of Englishmen, has so unfavorable an aspect on the property of the subject, that we could not, consistent with our duty, suppress our apprehensions."

The petitions to the Commons said:

"We cannot stifle our regrets that the laws of trade in general change the current of justice from the common law, and subject controversies of the utmost importance to the decisions of the Vice-Admiralty Courts who proceed not according to the old wholesome laws of the land, nor are always filled with judges of approved knowledge and integrity."

Admiralty jurisdiction in the colony extended to decisions in all maritime causes. Proceedings in the court were the same as in the High Court of Admiralty in England. The Court particularly tried cases and rendered decisions as to whether captures and hostilities between Great Britain and other powers were legal prizes.—Chester's "Legal and Judicial History of New York," I, 304-306.

his service to Penn, in 1684, in the boundary dispute between Pennsylvania and Maryland; his division of the province of New York into twelve counties;<sup>31</sup> and his circumvention of the plans of the French Canadian Governor, Denonville, for the extension of French influence along the interior waterways of northern and western New York. He may have undone even himself by his success in these moves, for his recall seems to have been in some measure caused by this good stewardship, the French King strongly protesting to King James against Dongan's activities among the Iroquois nations who were opposing Denonville. King James was further prejudiced against Dongan by William Penn, who had not forgotten that Dongan had outwitted him in his Susquehanna Valley aim. Still, these were but contributory factors. Dongan's recall seems to have been due rather to the fact that the new royal plans for New England called for harsher characteristics in the Governor than Dongan had shown. So Andros was thought of, New York and New Jersey were added to his New England commission, and in due course he reached New York. On August 11, 1688, he took the seals and records of the province of New York from Colonel Dongan, who then stepped down. The outgoing Governor, however, did not at once return to England. Maybe, he did not incline eagerly to the England of that time of the Bloody Assize; Catholic though he was, and cognizant of some of the ultimate aims of his sovereign lord, he cannot have looked

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31. The province of New York was divided by Dongan into twelve counties: the City and County of New York, Richmond, Queen's, King's, Suffolk, Duke's, Ulster, Orange, Duchess, Albany, and Cornwall. Ulster was probably so called because the Duke of York was also Earl of Ulster; Orange probably was to honor William of Orange, who married the daughter of James II, a relationship that had little restraining effect some years later; Richmond, after the Duke of Richmond, illegitimate son by the Duchess of Portsmouth, mistress of Charles II; Duke's County, which comprised Nantucket, Martha's Vineyard, Elizabeth Islands, and No Man's Land, was probably named after the Duke of York. The county of Cornwall included Pemaquid and other Maine territory the Duke possessed.



with sympathy upon the judicial infamies of the most atrocious judge of English history, "Bloody" Jeffreys, of whom Dickens wrote: "It is astonishing, when we read of the enormous injustice and barbarity of this beast, to know that no one struck him dead on the judgment-seat." Possibly, Dongan thought that Andros may have been expected to establish some such infamous judicial atrocities in the colonies, and for that reason he wished to stand by, knowing that the colonists would not meekly bear such injustice. Certainly, James could not hope to stamp out Protestantism in New England as he was frantically striving to do in England. But he was running a heedless race in the homeland; and in any case, the future could not be very certain under a Catholic King who was stubbornly opposed by the lords, the gentry, the trading classes and the peasantry of a Protestant country, and whose policy did not even find approval among his own bigoted Catholic courtiers, yet who declared: "I will lose all or win all." Dongan may have been a better judge of political factors than King James was. At all events, he declined a home appointment as major-general, and stayed on in New York, where he witnessed, and had part in some exciting happenings during the next two years.<sup>32</sup>

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32. Declining the command of a regiment with the rank of major-general offered by the King, he remained in New York, his residence being situated on Broadway between Ann Street and Maiden Lane. On the downfall of James II, Dongan was accused of instigating the adherents of that monarch to seize the province, and was forced to flee for his life. For a time he lived in New London, Conn., then returned to Hempstead; finally, in 1690, being included among Roman Catholics for whom apprehension writs were issued, he again fled, and after hiding in New Jersey made his way to Boston, where, in 1691, he embarked for England. In 1698 he succeeded to the earldom of Limerick, but did not regain the family estates which had been confiscated for several years, and at the last had but little to live on. He died unmarried, and his estates in America passed to three nephews, one of whom, Walter Dongan, left descendants. He was one of the most popular of the royal governors, owing to his regard for the rights of the people, his judicious policy and his courteous treatment of those who differed with him in religious matters. Governor Dongan died in London, England, Dec. 14, 1715.—"Nat. Cyclop. Am. Biog.," X, 241.



## CHAPTER XXIII. SECOND ANDROS PERIOD.\*

Governor Dongan scarcely needed to know which way the political wind was blowing in England. If he might judge by the prevailing boisterousness in America it was not to the King's good. Storms of ever-increasing violence were constantly recurring in the American colonies, sometimes reaching such force as to threaten to uproot the royal oak altogether. The King heeded not the gathering storms; but shrewder minds among his retinue must have seen ominous portents in several colonial incidents. Worthy Englishmen (among them cultured men of the gentility) reached the colonies as slaves, deeming themselves fortunate perhaps that their fate was no worse, after passing through the Bloody Jeffreys judicial mill. The Governor of Virginia was particularly admonished by King James to see that these exiles continued as slaves for ten years at least. "Take good care," he wrote, "that they continue to serve for ten years at least." His request that the Assembly pass a law to ensure this only made the Assembly "more turbulent." The colonists could not be cowed as Jeffreys had cowed almost all who had come before him.<sup>1</sup> But if Jeffreys had passed through any of the

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\*AUTHORITIES—Macaulay's "History of England"; Belfort's "History of the United States"; O'Callaghan's "Documents Relative to the Colonial History of the State of New York"; Bryant's "History of the United States"; Hawthorne's "History of the United States"; Green's "Short History of the English People"; Chester's "Legal and Judicial History of New York"; Trumbull's "History of Connecticut"; the "Andros Tracts, Publications of the Prince Society"; "Encyclopedia Britannica"; Brodhead's "History of New York"; White's "Nat. Cyclo. Am. Biog."

1. Some months after the Battle of Sedgemoor, which had such fatal consequences to the Duke of Monmouth, illegitimate son of King Charles II, who aspired to the throne of England then occupied by his uncle, James II, and which battle, by the way, was so easily won that Feversham had not even to rise from his bed to win it—at least so the wit of Buckingham gave forth—James II resolved to lay a heavy hand upon those who had in any way supported the Duke of Monmouth. He put this ter-



American colonies after James had torn all their charters to shreds, and destroyed their independent governments, he might have found hundreds of heads more deserving of attainder and the noose than those unfortunate Protestants to whom he gave such short shrift during the Bloody Assizes.

New York, under Dongan, had been more fortunate than most of the other royalized colonies. James despised all prior charters, being determined to reduce all the colonies to direct dependence on the Crown. Even the Catholic Lord Baltimore found his charter dishonored. James entrusted his new colonial plans to Governors whom he felt were able to rule with a heavy hand. Dongan was of the earlier order—of the time when James, as Duke of York, had to deal more considerably with the colonists. But Andros, his first choice for the Massachusetts and New England of the new order, fitted admirably. In all colonies the plan, in general, was the same. A great source of revenue was expected to lie in the destruction of land titles of individual colonists, by the destruction of

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rorism in the hands of Justice Jeffreys, "a red-faced, swollen, bloated, horrible creature, with a bullying, roaring voice" which had served the purposes of the late King Charles, in bullying the municipalities so well that "they soon became the basest and most sycophantic bodies in the kingdom." In September, 1685, Jeffreys, accompanied by four other judges, set out upon the circuit "of which the memory will last as long as our race and language," wrote Macaulay. Just before he set out, Jeffreys was notified that "he might expect the Great Seal (Lord Chancellor) as a reward of faithful and vigorous service." So he had an additional reason for making that circuit memorable. He opened his commission at Winchester, which had not been in the theatre of war but whither some of the rebels had fled. Lady Alice Lisle, widow of Justice Lisle, had "shed bitter tears for King Charles the First," had befriended royalists in their extremity, but now "the same womanly kindness . . . would not suffer her to refuse a meal and a hiding place" to two wretched fugitives who came to her door. They were found in her house by soldiers next day. She thus innocently became implicated in the insurrection. And she was the first of those ill-fated prisoners who appeared before Jeffreys. The case is shown to instance what infamous judicial practices might have been introduced in New York had James II's reign not been cut short. What follows is in Macaulay's own words:

. . . no English ruler . . ., the savage and implacable James alone excepted, had had the barbarity even to think of putting a lady to a cruel and shameful death for so venial and amiable a transgression.



colonial charters, exorbitant fees for reconfirmation of title being the scheme. In most of the colonies there was to be no representative assembly, taxes were to be imposed at the will of the Crown, and a state church which could easily be made papal was to be organized.

Andros had had a somewhat uncomfortable twenty months of riding roughshod over New England, before he was called upon by James to add the New York and New Jersey governments to his troubles. His work, in the matter of the Massachusetts charter was not difficult, for Charles had helped his brother James by declaring the Massachusetts charter forfeited eight months or so before he died. In the same year he had made Virginia a royal province. But Andros had an exciting time in Hartford, in 1687, when he demanded the Connecticut charter. Everywhere trouble was rising for James. The Virginians resorted to arms in 1688, and forced a more moderate government from the hitherto arbitrary Governor, Lord Howard of Effingham. Maryland was on

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Odious as the law was, it was strained for the purpose of destroying Alice Lisle. She could not, according to the doctrine laid down by the highest authority, be convicted, till after the conviction of the rebels whom she had harbored. She was, however, sent to the bar before either Hickes or Nelthorpe had been tried. It was no easy matter in such a case to obtain a verdict for the Crown. The witnesses prevaricated. The jury, consisting of the principal gentlemen of Hampshire, shrank from the thought of sending a fellow-creature to the stake for conduct which seemed deserving rather of praise than of blame. Jeffreys was beside himself with fury. This was the first case of treason on the circuit; and there seemed to be a strong probability that his prey would escape him. He stormed, cursed and swore in language which no well-bred man would have used at a race or a cockfight. One witness named Dunne, partly from concern for Lady Alice, and partly from fright at the threats and maledictions of the Chief Justice, entirely lost his head, and at last stood silent. "O how hard the truth is," said Jeffreys, "to come out of a lying Presbyterian knave!" The witness, after a pause of some minutes, stammered a few unmeaning words. "Was there ever," exclaimed the judge, with an oath, "was there ever such a villain on the face of the earth? Dost thou believe that there is a God? Dost thou believe in hell fire? Of all the witnesses that I ever met with I never saw thy fellow." Still, the poor man, scared out of his senses, remained mute; and again Jeffreys burst forth. "I hope, gentlemen of the jury, that you take notice of the horrible carriage of this



the point of rebellion in 1688; South Carolina had defied their Governor in 1687, refusing to pay quit-rents; and in 1688 North Carolina deposed and exiled their Governor. There probably was no darker day for any of the colonies than those of the few years of Crown government under James II. Had not William of Orange come to the rescue of England and ousted James in December, 1688, there seems little reason for doubting that the American colonies would have soon freed themselves. The population of the colonies was then about 200,000, by one account,<sup>2</sup> and thus could muster a formidable militia force; and in those days most men possessed arms.

Certainly the affronts offered to the colonists by the royal Governors were sufficient to provoke a rebellion. In Massachusetts, for instance, Andros exercised absolute sway. There being no charter, he argued that there could rightly be no General Court; the extortionate taxes he imposed were therefore by command; and to those who refused to pay, because such arbitrary measures infringed their inalienable rights and

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fellow. How can one help abhorring both these men and their religion? A Turk is a saint to such a fellow as this. A pagan would be ashamed of such villainy. O blessed Jesus! What a generation of vipers do we live among!" "I cannot tell what to say, my lord," faltered Dunne. The judge again broke forth into a volley of oaths. "Was there ever," he cried, "such an impudent rascal? Hold the candle to him that we may see his brazen face. You, gentlemen, that are of counsel for the crown see that an information for perjury be preferred against this fellow." After the witnesses had been thus handled the Lady Alice was called on for her defence. She began by saying, what may possibly have been true, that though she knew Hickes to be in trouble when she took him in, she did not know or suspect that he had been concerned in the rebellion. He was a divine, a man of peace. It had therefore never occurred to her that he could have borne arms against the government; and she had supposed that he wished to conceal himself because warrants were out against him for field preaching. The Chief Justice began to storm, "But I will tell you. There is not one of those lying, snivelling, canting Presbyterians but, one way or another, had a hand in the rebellion. Presbytery has all manner of villainy in it. Nothing but Presbytery could have made Dunne a rogue. Show me a Presbyterian; and I'll show you a lying knave." He summed up in the same style, declaiming during an hour against Whigs and dissenters, and reminded the jury that the prisoner's husband had borne a part in the death of Charles the First, a fact which was not proved by any testimony, and which, if it had been proved, would have been utterly



privileges, he answered that they had, now, but one privilege: "not to be sold as slaves." Magna Charta, ancient liberties, the rights of freeborn Englishmen did not hold against the abolition of the right of habeas corpus. "Do you think the laws of England follow you to the ends of the earth?" Andros tauntingly asked. He forbade any colonist, freeman or otherwise, to leave the colony without leave directly from himself. He made press censorship absolute, forbidding all printing except by the government printer. He flaunted Episcopacy before the Church of the Puritans; appropriated the old South Meeting House at Boston; declared that marriages were illegal unless solemnized by a Church of England clergyman. He dealt as drastically with the judicial system as with the religious. Perhaps, with the Jeffreys pattern in mind, Andros thought that, at the proper time, he might find a Chief Justice who would serve him as well as Jeffreys had served King James. Dudley seemed to promise well. "Juries were packed, and Dudley, to avoid all mistakes, told them

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irrelevant to the issue. The jury retired, and remained long in consultation. The judge grew impatient. He could not conceive, he said, how, in so plain a case they should ever have left the box. He sent a messenger to tell them that, if they did not instantly return, he would adjourn the court, and lock them up all night. Thus put to the torture, they came, but came to say that they doubted whether the charge had been made out. Jeffreys expostulated with them vehemently, and after another consultation, they gave a reluctant verdict of Guilty.

On the following morning sentence was pronounced. Jeffreys gave directions that Alice Lisle should be burned alive that very afternoon. This excess of barbarity moved the pity and indignation even of that class which was most devoted to the Crown. The clergy of Winchester Cathedral remonstrated with the Chief Justice, who, brutal as he was, was not mad enough to risk a quarrel on such a subject with a body so much respected by the Tory party. He consented to put off the execution five days. During that time the friends of the prisoner besought James to show her mercy. Ladies of high rank interceded for her. Feversham . . . spoke in her favor. Clarendon, the king's brother-in-law, pleaded her cause. But all was vain. The utmost that could be obtained was that her sentence should be commuted from burning to beheading. She was put to death on a scaffold in the market place of Winchester and underwent her fate with serene courage.

In Hampshire, Alice Lisle was the only victim; but on the day following her execution, Jeffreys reached Dorchester, the principal town of the county in which Monmouth had landed, and the judicial massacre began.



what verdicts to render." Randolph, "that blasted wretch," as Mather calls him, was an able lieutenant. A justice of the peace who was of independent mind was not wanted: "The scabbard of an English Red Coat shall quickly signify as much as the commission of a justice of the peace," declared Andros, quite frankly. Education was paralyzed; the right of franchise was virtually taken away, by the order that oaths be taken with the hand on the Bible, a "popish" order no conscientious Puritan would execute. Town meetings were forbidden, save for the election of local officers; and ballot voting was stopped. "There is no such thing as a town in the whole country," Andros declared. Massachusetts seemed to be prostrate—under the heel of a tyrant.<sup>3</sup> Truly, the wrongs which spurred the colonists to revolution three-quarters of a century later were not so grievous as these. Yet Massachusetts was not taking these injustices meekly. A strong, if quiet, resolution underlay their seeming acceptance of Crown government. In private meetings they were exhorted by their

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The court was hung, by order of the Chief Justice, with scarlet; and this innovation seemed to the multitude to indicate a bloody purpose. It was also rumored that when the clergyman who preached the assize sermon enforced the duty of mercy, the ferocious mouth of the judge was distorted by an ominous grin. These things made men augur ill of what was to follow.

More than three hundred prisoners were to be tried. The work seemed heavy; but Jeffreys had a contrivance for making it light. He let it be understood that the only chance of obtaining pardon or respite was to plead guilty. Twenty-nine persons who put themselves on their country and were convicted, were ordered to be tied up without delay. The remaining prisoners pleaded guilty by scores. Two hundred and ninety-two received sentence of death. The whole number hanged in Dorsetshire amounted to seventy-four.

From Dorchester, Jeffreys proceeded to Exeter. The civil war had scarcely grazed the frontier of Devonshire. Here, therefore, comparatively few persons were capitally punished. Somersetshire, the chief seat of the rebellion, had been reserved for the last and most fearful vengeance. In this county two hundred and thirty-three prisoners were in a few days hanged, drawn, and quartered. At every spot where two roads met, on every market place, on the green of every large village which had furnished Monmouth with soldiers, ironed corpses clattering in the wind, or heads and quarters, stuck on poles, poisoned the air, made the traveller sick with horror. In many parishes the peasantry could not assemble in the house of



ministers to keep their faith and hope alive for "God would yet be exalted among the heathen," they were told. Willard's words were more significant; he asked them to take note that they "had not yet resisted unto blood, warring against sin."

Andros had appeared in Rhode Island in 1687; had demanded that the charter be delivered to him; and had become impatient when Governor Clarke had sought to temporize. Andros summarily dissolved the Rhode Island government and broke its seals. In the same year he dealt with Connecticut, the government of which had been warned by Dongan what to expect. Dongan had counselled them to submit to Andros; but there were some in Hartford who were far from that mind. On the last day of October, 1687, Andros entered the Assembly Hall at Hartford, while the Connecticut Assembly was in session, with Governor Treat presiding. He came for the charter, but found that Governor Treat was

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God without seeing the ghastly face of a neighbor grinning at them over the porch. The Chief Justice was all himself. His spirits rose higher and higher as the work went on. He laughed, shouted, joked, and swore in such a way that many thought him drunk from morning till night. But in him it was not easy to distinguish the madness produced by evil passions from the madness produced by brandy. A prisoner affirmed that the witnesses who appeared against him were not entitled to credit. One of them, he said, was a Papist, and another a prostitute. "Thou impudent rebel," exclaimed the judge "to reflect on the king's evidence! I see thee, villain, I see thee already with the halter round thy neck." Another produced testimony that he was a good Protestant. "Protestant!" said Jeffreys; "you mean Presbyterian. I'll hold you a wager of it. I can smell a Presbyterian forty miles." One wretched man moved the pity even of the Tories. "My lord," they said, "this poor creature is on the parish." "Do not trouble yourselves," said the judge, "I will ease the parish of the burden." . . .

Jeffreys boasted that he had hanged more traitors than all his predecessors together since the Conquest.—Macaulay's "History of England," Vol. I, pp. 504, 505, 506.

2. The total population of the colonies at this date (1689) was about 200,000, as follows: Massachusetts (including Maine and Plymouth), 44,000; New Hampshire, 6,000; Rhode Island and Providence, 6,000; Connecticut, 19,000; New York, 20,000; New Jersey, 10,000; Pennsylvania and Delaware, 12,000; Maryland, 25,000; Virginia, 50,000; Carolina (as far as Florida), 8,000.—Belfort's "History of the United States."



somewhat contentious, entering "upon a defense of the fight of the colony to retain the ancient and honorable document, hallowed as it was by associations which endeared it to its possessors, aside from its political value." Andros, as usual, had the military arm behind him, and so continued strong in his purpose. Still, the dispute spread over so many of the hours of that day that candles had to be brought, lest they lose sight of the precious charter, which still lay upon the council table. By candle light the discussion proceeded. As it approached its climax, the Assemblymen left their seats and gathered around the table, "where stood on one side the royal Governor, in his scarlet coat laced with gold, his heavy but sharp-featured countenance flushed with irritation, one hand on the hilt of his sword, the other stretched out toward the coveted document—on the other the Governor chosen by the people, in plain black with a plain white collar turned down over his doublet, his eyes dark with emotion, his voice vibrating hoarsely as he pleaded with the licensed highwayman

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3. A great New England writer one hundred and seventy years later drew a graphic picture of what New England suffered under Andros, and the kind of government that was to be also established in New York.

"The roll of the drum," he says, "had been approaching through Cornhill, louder and deeper, till with reverberations from house to house, and the regular tramp of martial feet, it burst into the street. A double rank of soldiers made their appearance, occupying the whole breadth of the passage, with shouldered matchlocks and matches burning, so as to present a row of fires in the dusk. Their steady march was like the progress of a machine, that would roll irresistibly over everything in its way. Next, moving slowly, with a confused clatter of hoofs on the pavement, rode a party of mounted gentlemen, the central figure being Sir Edmund Andros, but erect and soldier-like. Those around him were his favorite councillors, and the bitterest foes of New England. At his right rode Edward Randolph, our arch enemy, that 'blasted wretch,' as Mather calls him, who achieved the downfall of our ancient government, and was followed with a sensible curse through life and to his grave. On the other side was Bullivant, scattering jests and mockery as he rode along. Dudley came behind, with a downcast look, dreading, as well he might, to meet the indignant gaze of the people, who beheld him, their only countryman by birth, among the oppressors of his native land. The captain of the frigate in the harbor, and two or three civil officers under the Crown, were also there. But the figure that most attracted the public eye, and stirred up the deepest feeling, was the Episcopal clergyman of King's



of England." Around the table were the determined Assemblymen, men of strong visage and, in all probability, of horny hands, patriots of earnest purpose and courageous heart. The flickering candles seemed the proper setting for the drama, emphasizing the general agitation, and jerkily testifying to the impatience that might soon flare into something serious, or be snuffed out altogether; the tension was too great to last much longer. Andros yearned to grasp the charter that was almost within his reach; his contenders longed for something else. It came—the preconcerted signal. Suddenly, simultaneously, the hall was in darkness. But all was not still; indeed Andros felt himself jostled; knew that his sword arm was gripped as by a vise—like that he had striven to fasten upon the colonies. There was a shuffling of feet, a surging of unseen men about him, excited muffled conversation. What it portended for him, he knew not; assassination, maybe, for those were days when human life was cheap. Perhaps he was afraid, although men of his time and station rather courted adventure, were not unused to such situations, and did not as a class shrink from the penalties of despotism, nor from the dangers of sport, in which the common people were sometimes the bait. The power of the sword was the only factor they recognized. Possessing it, Andros and his class could and would exact all it could bring them; dispossessed, they took with what grace they could, often with non-

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Chapel, riding haughtily among the magistrates in his priestly vestments, the fitting representative of prelacy and persecution, the union of church and state, and all those abominations which had driven the Puritans to the wilderness. Another guard of soldiers, in double rank, brought up the rear. The whole scene was a picture of the condition of New England, and its moral, the deformity of any government that does not grow out of the nature of things and the character of the people. On one side the religious multitude, with their sad visages and dark attire, and, on the other, the group of despotic rulers, with the high churchman in the midst, and here and there a crucifix at their bosoms, all magnificently clad, flushed with wine, proud of unjust authority, and scoffing at the universal groan. And the mercenary soldiers, waiting the word to deluge the street with blood, showed the only means by which obedience could be secured."—Hawthorne's "History of U. S."



chalance even unto death, whatever penalties their victorious adversaries might impose. So, perhaps, Andros was unafraid. He was not lacking in courage in other tests. Yet it is recorded that when the lights were again lit, the harsh stridency of expression so characteristic of Andros had changed to a husky murmur, not out of harmony with the temporary pallor of his face. "What devilish foolery is this?" he began. His voice was drowned in the volume that came from the strong lungs of a stalwart and seemingly astonished assemblyman, who thundered out: "The Charter! Where's the Charter?" as his massive palm came down upon the table with a clap that seemed to bring the answer echoing back from every corner, alcove, rafter: "Gone! Gone! Gone! Whither?" Andros was destined never to know during his term as Governor. He had to get along without it, and find what consolation he could in the knowledge that the word *Finis* had been put to the records of the Connecticut Assembly.<sup>3a</sup>

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3a. Such an exciting scene was hardly called for, and those who risked their lives in that episode can hardly have been in the fullest confidence of the Connecticut Government. It seems that the purloined charter was merely a duplicate of the original. The latter had already disappeared and was not again brought to light, from its place of concealment in the hollow of an oak tree since known as the Charter Oak, until Andros had been ousted and James II was no longer King of England. At some time between June and October, of 1787, a copy of the original seems to have been made on parchment, and when Andros appeared in October and demanded surrender of the charter few Connecticut legislators knew that the seemingly precious document which lay in the mahogany box upon the council table was only a counterfeit of the original, which had been inspected by the Connecticut governor and his Council three months or so earlier. In the Journal of the General Court of Connecticut under date of June 15, 1687, is the following entry:

"Sundry of the Court desiring that the Patent or Charter might be brought into the Court, the secretary sent for it, and informed the governor and Court that he had the charter, and shewed it to the Court, and the governor bid him put it into the box again, and lay it on the table, and leave the key in the box, which he did forthwith."

Whether this request by the Governor was prompted by plans already laid for the disposal of the charter, his action certainly made the document more accessible to those who had clerkly designs upon it; and Andros perhaps would not have known that he carried away only the duplicate in the charter box, had the dramatic incident of the blowing out of candles and



These were some of the experiences of Captain-General and Governor-in-Chief Sir Edmund Andros, prior to his assumption of supreme place in the government of New York and New Jersey also. One does not wonder, therefore, why Dongan decided to stay on in New York for a while—as an unofficial observer, as it were. He had not long to wait for decisive happenings.

Andros did not remain many days in New York. On August 15, 1688, after certain pompous ceremonies in New York City, conspicuous among which was the formal breaking of the seal of the province of New York and the substitution of the seal of the Dominion of New England, Andros proceeded in vice-regal state to act similarly in Elizabethtown, the capital of New Jersey. A tour of the southern territories, a journey in state to Albany, where he held impressive council with the Iroquois chieftains—and where he did not fail to take all advantage he could of the then recent abandonment by the French of a fort the latter had built a year earlier on the site of La Salle's old Fort de Conty—and a triumphal return down the Hudson River to New York, ended the ostentatious part of Andros' mission. On October 9, 1688, with the appointment of Francis Nicholson as Lieutenant-Governor, and perhaps a meeting together of his large Council<sup>4</sup> the

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the disappearance of the paper within the box never occurred. That it did occur, and that the paper extracted was the *duplicate*, not the original charter, are attested by later entries in the Connecticut records. In the Journal of Connecticut an entry in the year 1715 records the granting of the sum of "twenty shillings" to Captain Wadsworth "out of the Colonial treasury" as a token of their grateful remembrance of "such faithful and good service" as that he had given "in securing the duplicate charter of the colony in a very troublesome season."

4. The commission given to Andros made the following provision for his council:

"And you are accordingly forthwith to take upon you the execution of the place and trust Wee have reposed in you, and with all convenient speed to call together the Members of the Councill, by name Joseph Dudley, William Stoughton, Robert Mason, Anthony Brockholz, Thomas Hinckley, Walter Clark, Robert Treat, John Fitz Winthrop, John Nicholson, Frederick Philipse, Jervis Baxter, John Pinchon, Peter Buckley, Wait Winthrop,



organization of the "Territory and Dominion of New England in America" was completed. Andros returned to Boston, and Nicholson made New York his headquarters.

There is not much more to be recorded of the Andros administration in New York, although a direct outcome of its abrupt ending makes a dramatic chapter. Of Andros's Council the dominating New York members were Frederick Phillipse, Stephen van Cortlandt and Nicholas Bayard. The two first named were members of the Dongan Boundary Commission which disposed, temporarily at all events, of the dispute with Connecticut. All three were among the wealthiest of New York citizens. They had much influence with Nicholson, who was then only about twenty-five years old, a "lieutenant in the army"; and as the months passed and it became clearer that the Andros scheme of government was fatal to New York, they exercised that influence positively. The winter of 1688-89 had not ended before rumors reached New York of the momentous happenings in England. In February, 1689, it was known to Nicholson and his councillors that William of Orange was at Torbay. They immediately transmitted the information to Andros, and ordered at the same time that the King's money should be placed in the Fort—an ominous precaution. However, Andros seems to have treated the rumor lightly, or deemed that no danger to his government lay in New York; he sent no instructions to the

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Richard Wharton, Stephen Courtland, John Usher, Bartholomew Gidney, Jonathan Ting, John Hincks, Edward Ting, Barnaby Lathrop, John Sandford, William Bradford, Daniel Smith, Edward Randolph, John Spragg, John Walley, Nathaniel Clarke, John Coxhill, Walter Newberry, John Green, Richard Arnold, John Alborough, Samuel Shrimpton, John Young, Nicholas Bayard, John Palmer, William Brown, Junior, Simon Linds, Richard Smith and John Allen, Esquires: At which meeting after having published out said Commission or Letters Patents, constituting you our Captain-General and Governor in Chief of our said Territory and Dominion, you shall (after first taken the like Oath yourself) administer to the members of our Councill, the Oath for the due execution of their places and trust."—See O'Callaghan's "Documents Relative to the Colonial History of the State of New York," III, 543.

Lieutenant-Governor and Council in New York until nearly three months later, when he was already a prisoner in the hands of the Boston Committee of Safety, and the revolution in New England had triumphed without the shedding of a drop of blood. The news seems to have been kept out of Boston until April. Then John Winslow, who had just come up from Virginia, spread the news of the success of William of Orange, and of the flight of James. Andros then acted immediately, but without avail. The unfortunate Winslow was imprisoned, but the news had passed beyond recall, had spread far and wide. Andros issued a proclamation against the Prince's cause, but this only fanned the flame of revolt. On all sides there was suspicion. The people watched Andros as closely as he watched their leaders. But threats by Andros and cautious movements by Boston leaders could not stop action by the people. Smoke was fast becoming flame. Soon the popular excitement in Boston was altogether beyond control. The North End heard that the South End was in arms; the South End heard that the North End was on the march. Tar barrels blazed up on Beacon Hill. Country people came in, by land and water, to Boston. Drums were beaten through the town, and on April 18, at noon, a company of Boston soldiery escorted a number of former magistrates to the Town House. From its balcony the magistrates fearlessly read to the expectant populace below the "Declaration of the Gentlemen, Merchants and Inhabitans of Boston and the Country adjacent." This declaration rehearsed the oppressive acts of the Andros administration; the illegal appointment of the Dudley Commission; the wrongful suppression of the charter; hailed the accession of William of Orange to the throne of England; and justified the arrest and imprisonment of "those few ill men which have been (next to our sins) the grand authors of all our miseries." Action had already been taken, many of the obnoxious citizens who had been of the Andros administration having been arrested. Aid sent to Andros



from the frigate "Rose" had been overpowered; so Andros, finding escape impossible, went from the Fort to the Town House, and there gave himself up to the Boston Committee. The frigate "Rose" struck her topmasts next day, and a few days later Chief Justice Dudley, who had been out of town, was arrested. A "Council for the Safety of the People and Conservation of the Peace" was organized with Simon Bradstreet as president; and this was the only governmental body recognized. Thus the Andros government was overthrown in Boston. The revolution was accomplished with less risk and excitement elsewhere; and although Andros twice escaped from confinement—getting as far as Newport, on the second occasion before being recognized and again returned to Boston—his power had been completely swept from New England long before he was permitted to again sail from its shores.<sup>5</sup>

It is not surprising that Andros acted so promptly to suppress the news Winslow brought to Boston in April, 1689, but altogether ignored for three months the urgent request from New York, in February, as to a like rumor. Boston was of one mind; all were against Andros and his institutions, ecclesiastical and judicial, whereas the people of New York were of so many minds that Andros probably calculated that any

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5. In New Hampshire a convention was held to organize a government, and at its second session resolved to unite with Massachusetts, in ousting Andros. In Plymouth Colony Nathaniel Clark, the agent of Andros, was imprisoned, and Thomas Hinckley, former governor, resumed office on April 22nd; in Rhode Island the charter was revived, and all the officers who had been displaced by Andros resumed office, with the exception of Walter Clark, governor, who wavered. Hence that colony was without a governor for some time, from May 1st. The Connecticut legislators found the missing charter in a hollow oak, and under its authority Former Governor Treat convened the Assembly in May, Connecticut soon finding its territory voluntarily increased by Suffolk County, Long Island, which elected to join Connecticut. In New Jersey, the Andros government merely collapsed, pending orders from the Crown, and no new governor was appointed until 1692. In Maryland, as Lord Baltimore's deputies hesitated to proclaim William and Mary, an armed association of Protestants was formed in April under John Coode. They assumed the government, and excluded all Papists from office.

sectional action would spend itself upon an opposing faction within the province, without troubling the Governor. The English of New York were Protestant but not so keenly Puritan that they cared much whether Andros established an Episcopal or a Reformed church in New York, though they drew the line against a Catholic church; and if, as might be anticipated, the Dutch would open their arms to their own Prince of Orange in a new role, as King of England, the English colonists might reasonably be expected to counter this by inclining to the cause of James. So, Andros may have thought. The New York authorities, however, were perplexed. Lieutenant-Governor Nicholson and his Council hardly knew what action to take; and, as a matter of fact, no positive movement was made by either the inhabitants or the government in New York for almost three months after news reached them of the revolution and impending dynastic change in England. But on April 26, Lieutenant-Governor Nicholson called together his Council to read to them the formal declaration of the Boston Committee. The communication was to them a "great surprizall"; and withal so momentous that they deemed it prudent to call into consultation the Mayor and Common Council, and also the militia captains of New York City. As subsequent events showed, the future would have been easier for them had they not called the military heads to their council. Maybe, the Governor and his councillors would not even have thought it necessary to confer with the municipal heads had they not received, on that very day, intimation that France had declared war upon both England and Holland. The news from Boston, as to Andros, was serious, but the news from England, that the powerful and Catholic France was at war with England, was of far more serious portent to New York. The deliberations, therefore, of the Governor and his Council with the local officials soon turned from concern for the Andros administration to measures of defence of the city and province against possible attack by France or



Canada. The deliberators decided to fortify the town, and for that purpose to divert all revenue receipts for some time.

Other perplexities were before the Council. The inter-colonial situation was delicate. Massachusetts was strong, and would be glad to expand at the expense of northern New York. Connecticut was chronically dissatisfied with its Anglo-Dutch neighbor. So New York could not afford to ignore the Boston Committee. But Andros might come back to power. So, Nicholson and his Council adopted caution. On May 1 they craftily replied to the communication from Boston. One copy of their reply they addressed to Sir Edmund Andros, whom they asked to return the records of the province which he had taken to Boston in the previous October; the other copy they addressed to President Bradstreet and his associates, but changed the wording so that it read as a request that Andros himself be forwarded to them. Bradstreet, in answer, declined to release the former Governor-in-Chief, thus leaving Nicholson and his Council with no alternative but to face their own difficulties as best they could.

The temporizing policy of the Council exasperated the people. No proclamation of William was made, but it did not fail to be noticed that the Episcopal chaplain at the Fort regularly prayed for the infant Prince of Wales whose birth to King James had prompted Councillor Stephen van Cortlandt, a few months before when news of the birth reached New York, to honor the event by sacrificing his own wig, which went up in smoke from the point of his sword while he made merry in public. This was remembered. It was also not forgotten that King James was a Catholic; and Nicholson was also thought to be a Papist, though he professed to be Protestant. Moreover it had not passed unnoticed that Romanists had, during Dongan's time, been coming in, and that the province now harbored more Catholics than there were in all New England, a fact which now took on a sinister significance. All movements, trivial or serious, at a time like that, were

apt to seem suspicious, and easily distorted into significant ominous portents. The militia captains began to lift their eyes and wrinkle their brows when they were called into consultation with the Council; and they gradually became convinced that Bayard, of the Council, who was also colonel of the six New York companies of militia, secretly planned to use that force to aid the deposed Catholic James when the opportune moment arrived, which they surmised would be when a French force appeared off New York.

To be truthful, it must be stated that the Council in their actions proved to be more concerned in and more loyal to New York than to either Catholic or Protestant ruler of England. Their mental state was merely one of hesitant caution. For instance, they wrote to the secretary of state—they did not name him, and did not seem to mind whether he served James or William—and also to the Lords of the Board of Trade, in the hope that by the disruption of almost all things governmental in England and the colonies they might snatch an advantage for their own province, at the expense of Massachusetts. They pointed out “how fatall it hath been to this city and the Province of New York for to be annexed to that of Boston, which, if it had continued, would have occasioned the totall ruin of the Inhabitants of said Province.”

But their public action was somewhat palsied, and their hesitancy was misconstrued, most of all by the militia captains. Nicholson made matters worse by a somewhat indiscreet speech, which was made in the hope that he might strengthen his own authority, until the political situation became clearer. His words were taken as, or distorted into, a threat that he would burn the city if provoked. The effect upon the already suspicious soldiery was immediate. The captains resolved to override their colonel, take matters of defence into their own hands. One of the captains, Jacob Leisler, the most commanding personality among the train-bands, was not averse to taking the responsibility; in fact, the whole



movement seems to have been initiated by him. The militia companies mounted guard at the Fort by turns; it was therefore planned that when the turn of Leisler's company should next come, all companies at a certain signal would gather and parade, urging the town to unite with them to defend the Protestant religion. According, on June 3, Leisler gave the signal which brought the six companies out. The occasion was improved by the spreading of a rumor that the French fleet was in the offing, Leisler being ultimately accused of originating and spreading the rumor himself. But the rumor was effective. The whole city rallied, and the military guard was swept into office, with Leisler at their head. Some of the captains hesitated, it is said, but the record shows that of six New York companies six captains and four hundred men, at Leisler's direction, signed a declaration that they would "hold the fort for his Royal Highness, the Prince of Orange, on behalf of such person as he had appointed Governor."

Under the circumstances Lieutenant-Governor Nicholson could hardly continue in office. Therefore, on June 6, he notified his Council that he would leave for England. On June 10 he gave over the government to the Council, and at the end of the month sailed. Before he sailed, however, he knew that his resignation had not been called for by King William. At the same time, he probably recognized that to attempt to assert his authority would be futile. It was vital to at least one important section of the inhabitants that Catholicism be fought; and the Protestants in general were being stirred by Leisler and others. There were very many Huguenots in New York Province, poor Protestants who had escaped from France after the revocation of the Edict of Nantes, in 1685. They, in particular, dreaded the possibility that the spectre then faintly before them might become real; they shrank from the thought that, even so far away as they were, the merciless arm of Catholic France might yet reach them, and drag them back to France—for torture and death. So Nicholson, who



was suspected of being a Catholic, though he professed to be a Protestant, probably would not have been permitted to resume office,<sup>6</sup> under King William's general order which continued in office, for the time being, all Protestant officials.

Sir Edmund Andros and Francis Nicholson thus finally passed out of New York history. Both were Governors of other American colonies in later years, and both received royal advancement with the passing years, but New York was never again to be in their hands. Briefly commenting on their careers, it appears that Sir Edmund Andros was born on the Island of Guernsey, December 6, 1637; was brought up as a page in the royal family, and went into exile with the Stuarts after the death of King Charles the First. Andros fought in the continental wars, in the army of Prince Henry of Nassau. After the Restoration he returned to England with the Stuarts, married well, and gained distinction in the war against the Dutch. In 1672 he became major of a regiment of dragoons. In 1674 he came to New York as Deputy Governor for the royal proprietor. In 1682 Dongan succeeded him, and in 1686 Andros was entrusted with wider authority

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6. Had Nicholson dared to remain in New York, he would have received a commission from King William broad enough and strong enough to relieve him from all difficulty. For, all through these confusions William showed no fondness for any revolutions but such as he made himself. On the 30th of July, while Nicholson was yet on the ocean, an order issued at Whitehall to appoint him Lieutenant-Governor, enclosing instructions from the King and Queen. The letter was addressed to him, and, in his absence, "to such as for the time being take care for preserving the peace and administering the laws." It is said that Nicholson arrived in London before the letter was started, and it had been conjectured that no alteration was made in the address, because it was supposed that Phillipse, Cortlandt and Bayard would open it. But Nicholson must have told the authorities that a convention had been summoned, and that Leisler was in actual command. It is probable either that the despatches were beyond correction, or that the English authorities were willing to avail themselves of the doubt hidden under the address. In point of fact, at the moment they were written Bayard and Cortlandt had both fled from New York, and there was no government there but that of Leisler. Nor did the Council, which was thus reduced to Phillipse alone, make any pretence of exercising authority.—Bryant's "History of the United States," III, 18.



as Governor-in-Chief of New England, taking over New York government from Dongan in 1688, as has been stated in earlier pages. He had been knighted in England in 1677, and was thoroughly Royalist in all his thoughts and actions. On April 18, 1689, he was deposed, and was impeached on June 27 by a colonial Assembly. He was ordered home in November following, for trial, but was never tried, "the American agents, singularly enough, declining to sign the statement of grievances which was prepared for them by their legal counsel." As a matter of fact, William of Orange was somewhat alarmed at the "daring spirit" shown by Massachusetts in the ousting of Andros. Andros was set free, and was soon again in royal favor. In 1692 he arrived in Virginia, as royal Governor. There he remained until 1698, when he was removed, after being involved in controversy with Commissary James Blain who was the first president of William and Mary College, and who charged Andros with being "an enemy to religion, the church and the college." From 1704 to 1706 Andros was Governor of his native island, Guernsey. He died in London February 24, 1714. The career of Andros shows that disfavor in the colonies did not necessarily bring royal disfavor. In every colonial appointment his actions reached the point at which they could no longer be tolerated; yet for each colonial failure he was rewarded, indicating that the interests of the Crown were directly opposite to those of the colonies.

Sir Francis Nicholson was born about 1664 and first came into American record on October 9, 1688, when appointed Lieutenant-Governor of New York, under Andros. He was probably too young for the stern realities he would have had to confront in New York, in 1689, with Leisler in command of the armed forces, and, possibly ambitious to usurp his place as Governor. At all events, suspicion as to his religious faith, made it impossible for Nicholson to remain. Like Andros, he was advanced in the royal service. He was sent as Governor

to Virginia in 1690, Andros succeeding him two years later. From 1691 Nicholson was also Lieutenant-Governor of Baltimore's province, Maryland, and became its Governor at Copley's death in September, 1693. He again was Governor of Virginia 1699-1705, after which he reëntered the British Army. He commanded the forces that captured Port Royal, Nova Scotia, in 1710, and was Governor of Nova Scotia, 1712-17. From 1721 to 1725, he was Governor of South Carolina. He was knighted in 1720, and in 1725, after returning from South Carolina, was given the military rank of lieutenant-general in the British Army. This was the climax of his career. He died in London two years or so later—March 5, 1728. The career of Sir Francis Nicholson was thus far more distinguished than those who knew him in New York in his young manhood thought he would gain; and his service in the colonial wars was not without value to America. He was not of the arrogant type of Royalist, and many of his administrative acts in Virginia, Maryland and South Carolina were of lasting constructive value.







## CHAPTER XXIV. THE LEISLER CASE.\*

With the passing of governing authority from Nicholson to his Council—Bayard, Phillipse and Van Cortlandt—Leisler became to all intents the military dictator. Soon, he ignored altogether the Council, and ultimately assumed the Lieutenant-Governorship. Long before the latter elevation, however, he was recognized as the Governor, or at least the Acting Governor, of the province. While Nicholson was still in the city, Connecticut ignored both the late Governor and his Council, and tacitly recognized Leisler as the governmental head, in sending direct to him a printed copy of the Proclamation of King William, for publication in New York. They probably looked upon Leisler as in the same category as Bradstreet. Leisler, perhaps, so classified himself, for he did not confer with the Council in the matter of the proclamation. For obvious reasons he would not discuss it with Nicholson. So he read it himself in public. Those parts of it which did not harmonize with his own plans he did not bother to observe. For instance, he did not for a moment think of recalling Nicholson as Lieutenant-Governor, in accordance with the King's proclaimed wish, which was that all officials of the Andros government who were Protestants should be continued in office. Bradstreet was likewise unobservant.

Certainly, Leisler looked upon himself as the leader of the Protestant movement in New York—as the Defender of the

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\*AUTHORITIES—Werner's "Civil List and Constitutional History of the Colony and State of New York"; "Documents Relative to the Colonial History of the State of New York," by O'Callaghan; "Colonial Minutes"; Bryant's "History of the United States"; Duruy's "Short History of France"; Chester's "Legal and Judicial History of New York"; "Encyclopedia Britannica"; Hawthorne's "History of the United States"; "Administration of Leisler," New York Historical Soc. Collections, 1868; Parkman's "Life of Frontenac."



Faith as it were; and he deemed the Council to be of the enemy if not of the enemy church. He read the proclamation on June 22; and because Governor Dongan was a Catholic, he called upon all justices, sheriffs, military and other officers who had been appointed by that Governor, to surrender their commissions. Imitating Bradstreet, Leisler invited the counties and towns to send delegates to New York to organize emergency government. The convention was held on June 26 and ten of the twelve delegates—the other two withdrew after the first session—signed a paper appointing Leisler to be captain of the Fort, while they themselves were to constitute a Committee of Safety. The names recorded as of this Committee of Safety are: Richard Panton, Theunis Roelofsen, Jan Demarest, Daniel de Klercke, Johannis Vermilye, Samuel Edsall, Peter de la Noy. Leisler evidently dominated this committee, for in the following December they appointed him Lieutenant-Governor, and designated the following as his Council: Geraldus Beeckman, of Kings County; Peter de la Noy, Samuel Staats, Johannis Vermilye, and Hendrick Jansen (van Feurden), of New York; Samuel Edsall, of Queens County; William Lawrence, of Orange County; Thomas Williams, of Westchester; and Jacob Milborne, Leisler's son-in-law. The last named was the chief aid of Leisler, being provincial secretary, attorney-general and advocate-general. It was an unfortunate association, for it cost him his head.

The former Council tried to function for a little while after Nicholson had vested them with his authority. They appointed three commissioners of taxes. These, however, Leisler summarily dismissed, and appointed Peter de la Noye collector, in place of Plowman, who was a Catholic. This and other aggressive acts by Leisler alarmed the councillors, and Bayard fled to Albany on June 28, fearful that he would pay with his life if he remained in New York. Cortlandt and Phillipse soon joined him, and from that place of security they tried to exercise their offices. Their presence, perhaps, influ-

enced the Albany inhabitants and municipal officials to refuse to recognize Leisler, and to decide to await the will of William and Anne. This state of divided government continued until the spring of 1790, when imperative need of unity of front against the attack of the French caused Schuyler to bend to Leisler.

The task of Leisler, the erstwhile soldier-merchant, was by no means easy. His foes within the province were sufficient to seriously hamper his administration, but the foe without caused him far greater concern. When he, or his party, spread the rumor that the French fleet was in sight, he was probably not aware of the vindictive plans of the French King, though he could well surmise that in case of victory by the Catholics, the lot of the Protestants would be hard. As a matter of fact, the French King, on June 7, 1689, in the very week in which Leisler took command in New York, gave instructions to Frontenac to conquer New York, make English agriculturists slaves, and return all Huguenots found in the province to France—to be tortured unto death, presumably, and so give the merciless King and more merciless prelates the satisfaction they had been denied by their escape after the revocation of the Edict of Nantes.<sup>1</sup> Leisler did not know of this, but he knew the Jesuits were already among the Indians beyond Albany, insidiously preparing the way for the French triumph. The Albany commander was also aware of it, although he felt that he could handle the situation without aid from Leisler. Sharp, who was in control at Albany, was

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1. Part of the direct orders to Frontenac from the French king for the invasion of New York reads: "If among the inhabitants of New York there are any Catholics whose fidelity can be assured they may be left in their homes after they have sworn fidelity to King Louis. From the other inhabitants, artisans and people necessary for agriculture may be kept at work as prisoners. All officers, and all principal inhabitants, will be kept in prison till they are redeemed by ransom. With regard to all others who are not French, they will be transported to New England, France, or other places. But all Frenchmen, *especially those of the pretended reformed religion*, will be sent to France."



a Catholic, which, perhaps, explains why Albany authorities spurned Leisler's authority. From the outset, Leisler was left in no doubt as to the attitude of the frontier village. The communities of the Albany region refused to send delegates to Leisler's convention; in fact, they held a convention of their own, which convention promptly confirmed the Albany government in its quasi-independence. But after news reached Albany of the massacres at Pemaquid and Dover, New Hampshire, and it was realized that the French had greater influence with the Indians than Albany leaders had thought likely, the weak state of Albany, which could soon be isolated, was uncomfortably emphasized. The Albany government promptly appealed to Leisler. They, in turn, were spurned, though Leisler did decide to send up a military force to defend what he looked upon as a part of his own government. Aid under such conditions, Albany would not accept. They wrote to Connecticut and Massachusetts, and, to remove a possible cause for refusal of aid, they appointed Peter Schuyler to the chief command, in place of the Catholic, Sharp. Apparently, New England had promised support by the time Leisler's company, under Milborne, reached Albany, for Schuyler positively refused to admit Milborne and his soldiers to the fort. Soon afterwards the fort and outposts at Schenectady were manned by Connecticut men.

Leisler thus had at least the satisfaction of realizing that the frontier was under English guard, even though not his own. So he applied himself more to guarding the sea front, before which the enemy might at any time appear. Incidentally, he made his own position in the government more secure, by applying to himself the commission sent by King William to Nicholson, whereby the latter was appointed Lieutenant-Governor. The King's commission, bearing date of July 30, was addressed to Nicholson, or, in his absence, "to such as for the time being take care for preserving the peace and administering the laws." These deputies of Nicholson would be Phillipse, Cortlandt, and Bayard, had it not been for



Leisler's interference. The commission did not reach New York until December 9, coming by way of Boston; and long before that time, the Council had ceased to function. So the bearer delivered the commission to Leisler, who obviously was in governmental control. But Cortlandt and Phillipse, who had returned to the capital, and had heard of the arrival of the King's messenger, claimed the despatches. Possibly, this was considered as opportune opposition by Leisler and the Committee of Safety, for they forthwith agreed with Leisler that he might be considered as legally appointed Lieutenant-Governor by the King, inasmuch as he was "the person who administered the laws and preserved the peace." To make the appointment regular the committee named a Council. In the next month, Leisler issued several commissions of Oyer and Terminer, naming Peter de la Noye as judge.

Cortlandt and Philippsse protested to King William, and this was answered by the appointment, in January, 1690, of Colonel Henry Sloughter, as Governor, succeeding Nicholson; but fortunes of war<sup>2</sup> delayed his departure for a year. It was

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2. The war by the French, in support of James II, did not go in the favor of the Prince of Orange in the early months. A squadron of thirteen large vessels carried James to Ireland, where Tyrconnel had a Catholic army of 50,000. Convoys of troops, arms, and munitions left Le Havre, Brest and Rochefort, protected by Renaud, d'Estrees and Tourville. The English and Dutch attempted to intercept their passage; but Chateau-Renaud beat one of their squadrons in Bantry Bay; Tourville, with seventy-eight ships, attacking their main fleet on the Sussex coast off Beachy Head, sank or burned sixteen of their vessels, while the rest took refuge in the mouth of the Thames or among the Dutch banks (July 10, 1690). This victory gave Louis XIV the mastery of the sea for some time, and matters would have been grave for Protestant England and the Prince of Orange had not James found that the Catholic Irish were not disposed to shed their blood to win England for him, though they were willing that he, and his French army, should help them to sweep the Protestants out of Ireland. James had lost valuable time and munitions in the Siege of Londonderry, and his cause went down to defeat in the Battle of the Boyne. Therefore, he returned to France (July 11, 1690). Still, until the Battle of La Hogue (May 29, 1692) brought such naval disaster to France as to be often described as "that navy's tomb" (though wrongly described), the French made the seas dangerous for British and Dutch ships. This perhaps explains why Governor Sloughter took more than a year to reach New York after receiving his commission.



an eventful year for Leisler, and not by any means a discreditable one.

Frontenac, the Canadian Governor, had planned an aggressive campaign for the year 1690. He began it by a sudden attack, at sunset of February 8, upon the unsuspecting village of Schenectady. In a couple of hours, the French and their savage allies had massacred sixty persons—men, women and children. Eighty or ninety were carried into captivity. Only a few escaped through the snowstorm to Albany. By noon of the next day Schenectady was in ashes.

Schuyler, at Albany, expected attack and prepared to meet it as best he could. Meanwhile, he despatched messengers to Massachusetts, Connecticut, Maryland, and even to Virginia, seeking aid. Connecticut offered sound advice, suggesting to Schuyler that the present "was no time to quarrel with New York." Schuyler was of the same mind, and did not hesitate to ask Leisler for support. And Leisler showed that he could put personal affronts behind him, and that his first thought was of the safety of the province. He at once made arrangements to meet the common danger; moreover, he supported the Albany government in the latter's appeal to New England for reinforcements.

Leisler apparently did not enter half-heartedly into any action upon which he had set his mind. He saw that concerted plan of operations against the French was vital to the existence of New England as well as to New York; and he lost no time in acting upon the conviction. He forthwith invited the other colonies to send delegates to New York to consider united action, in this way coming somewhat distinctively into American history as the promoter of the first English Colonial Congress. Those who took part in this historic convention were Stoughton, Sewell, Gold, Pitkin, Walley, Leisler and De la Noye. These seven delegates went into session at New York City on May 1, and agreed that New York should provide 400 men, Massachusetts 160, Connecticut

135, Plymouth 60, Maryland 100. Transportation rather than population decided the quota of New York, which ought by any other standard have been much less than either the Massachusetts or Connecticut quota. The delegates unanimously agreed that Leisler should appoint the commander.

Leisler promptly rebuilt the fortifications at New York, the fort now taking the name of Fort William. When news came that French cruisers were not far away, Leisler sent out privateers to engage them. An occasional prize was brought into New York, and in other ways throughout the year it was evident that Leisler was handling military and naval affairs satisfactorily. His ways of handling domestic matters were, however, not so satisfactory. He was said to have been at times somewhat arbitrary, which attitude increased the number of his enemies, and intensified their bitterness. Still, desperate situations call for vigorous handling; and these vigorous measures might well veer to arbitrary actions, or to be so construed by unfriendly critics. To an impartial mind it does not seem that the province was harmed during the interregnum by being in Leisler's keeping instead of Nicholson's. Unfortunately, the so-called usurper spoiled a creditable record by a few weeks of somewhat stupid opposition of a regular British force early in 1691. On January 29, Major Richard Ingoldsby arrived in New York at the head of a company of regular soldiers, which, according to his representation, was the advance guard of the new Governor, Slaughter, who had left England at the same time, but had been delayed in Bermuda. Ingoldsby could show no authority, civil or military, but he demanded that Leisler deliver the fort to him. Leisler refused, until the new Governor, or some one commissioned by him, should arrive. But he offered Ingoldsby every possible courtesy, and quarters for his troops. Ingoldsby stood upon his dignity and shots were exchanged between the two forces, a collision of subsequent testimony making it hard to determine which force began the combat.



Some lives were lost, but Leisler held the fort until March 19, when Colonel Sloughter arrived. To him he surrendered the fort.<sup>3</sup>

Leisler was arrested, and, with his Council, promptly tried. For this purpose a special commission for a Court of Oyer and Terminer was issued on March 24, those named in the commission to constitute the court being Joseph Dudley and Thomas Johnson, who had just been appointed judges in Admiralty; Sir Robert Robinson, Colonel William Smith, Recorder William Pinhorne, Mayor John Lawrence, of New York; Jasper Hicks, captain of the frigate "Archangel"; Major Ingoldsby—an infamous choice—Colonel John Young and Captain Isaac Arnold. The indictment was for murder and treason. Six of the prisoners pleaded in form, but Leisler and his son-in-law, Milborne, refused to plead until the court would decide whether the King's letter and the papers with it gave no power to Leisler. The trial took eight days, at the end of which all the prisoners were under sentence of death, Joseph Dudley, who had been Chief Justice of Massachusetts during the Andros administration, pronouncing sentence. All prisoners were, however, reprieved by the Governor, by the advice of the judges, pending word as to the King's pleasure.

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3. In this state of half war, Leisler maintained the fort for some weeks, until on the 19th of March, Sloughter, the long looked-for Governor, arrived, for whom he said he had been waiting. Here, on the after trials, testimony differed again. Leisler's son said that his father, as soon as he had notice of Sloughter's arrival, although late at night, sent two gentlemen to congratulate him on his arrival, and offer the fort and government to him as their Majesty's Governor, but that they, without being heard, were committed to the common jail; that the next morning Captain Leisler sent a letter to the Governor, desiring him to send some persons to receive the fort, which he did, but immediately caused said Leisler and others to be committed to prison. Colonel Sloughter, in his official report to the King, says he sent Major Ingoldsby to demand the fort, to whom Leisler replied that he would own no Governor without orders from the King directed to him. Sloughter also says that Leisler sent a man out that night to identify him and make sure that he was Colonel Sloughter; that he then demanded the fort from Leisler a second time, and that he refused it; that only when preparations were made to storm it did Leisler send out the two persons spoken of to surrender it.—Bryant's "History of the United States."



The subsequent schemes of Leisler's enemies to make sure that his downfall should be permanent were marked by such feverish vehemence that a besotted Governor was soon implicated in a worse disgrace than that which was deservedly his by appointing Leisler's enemies to be his judges. The intrigues of Nicholas Bayard and others by which Governor Sloughter, when "in his cups," was prevailed upon to sign the death warrant of Leisler and Milborne, and the execution of the warrant "before the Governor had recovered his senses,"<sup>4</sup> have been briefly referred to in Chapter XIV. The two unfortunate misguided patriots were hanged and afterwards decapitated, "in the presence of an indignant people."<sup>5</sup> Sloughter himself died a couple of months later, his sudden demise giving ground for suspicion that he had been poisoned. This was not, however, proved by autopsy, although the physicians probably did not look for alcoholic poisoning. Another of the conspicuous characters of this case came near losing his head also some years later. He, Nicholas Bayard, the most

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4. It is said that Sloughter did not intend to carry the sentence into effect; but the local enemies of Leisler made the governor drunk that night and secured his signature to the decree. This was on May 14, 1691; on the 15th, the house disapproved the sentence, but on the 16th it was carried out, the victims meeting their fate with dignity and courage.—Hawthorne's "History of the United States."

5. The hanging of Leisler and Milborne, who had been convicted and sentenced, though refusing to plead and standing dumb through the trial, caused, under the circumstances, a great revulsion of public feeling against the new court and its judges. Whatever we may think of the regularity of the trial and the justness of the verdict, probably no public event in our colonial history exerted a deeper or more enduring influence on the social and political life of the province throughout its subsequent history than this "barbarous murder" and "vengeful sacrifice," as it has been variously characterized. For many years the public men of New York were known as Leislerians or Anti-Leislerians. It was not long after Leisler's execution that his sympathizers had their revenge upon his persecutors, the chief of whom was Nicholas Bayard. At the time of Attwood's appointment as Chief Justice, Leisler's attainder had been reversed by Act of Parliament, in effecting which the Earl of Bellomont, before he came out as governor, had taken an active part. On his arrival here, in 1700, he as well as Lieutenant-Governor Nanfan, were friendly to the so-called Leislerian faction. On the death of Bellomont, Nanfan, Thomas Weaver, Collector of the Port, and Chief Justice Attwood were in full control. They caused



vindictive of Leisler's enemies, got so near to just punishment as to be sentenced to be "hanged, drawn and quartered" for another offence, but really because of his part in the crime against Leisler, which a later Governor of New York characterized as judicial murder.

Leisler's influence did not end with his death. For a generation or more the political parties were Leislerian or Anti-Leislerian; and the party strife was as bitter and vindictive as in the days when the horror of the then recent judicial murder stirred the feelings of Leisler's friends, and roused his enemies to bitter defiance. The bitterness was intensified a few years after Leisler's death, after action by the British Parliament. The Leisler case was taken to England by his son, and argued before the House of Lords, the Anti-Leislerians having as their spokesman former Chief Justice Dudley, the presiding judge who had sentenced Leisler. The Leislerians had good support from the Earl of Bellomont; and after a full discussion the attainder pronounced on Leisler was reversed by

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a warrant to be issued by the Council for the arrest of Nicholas Bayard, Rip Van Dam, Philip French and Thomas Wendam on a charge of High treason, in that they (all Anti-Leislerians) had signed addresses to the King, the House of Commons, and to Lord Cornbury, news of whose appointment as Governor had reached the city, charging their opponents then in power with all manner of malfeasance in office, with the connivance and support of Lieutenant-Governor Nanfan. Alderman Hutchins, in whose tavern the addresses were signed, had been committed by Nanfan for refusing to disclose the signers' names. Attorney-General Broughton had given an opinion on the Lieutenant-Governor's application, to the effect that there was nothing criminal in the addresses, and that Hutchins' refusal to give up the names was not a criminal contempt justifying his indictment. But the Grand Jury having been induced to bring in an indictment, Attorney-General Broughton was suspended (being commissioned by the Crown he could not be removed) and Weaver was appointed to conduct the prosecution before a specially commissioned Oyer and Terminer, composed of the chief justice, Attwood, and De Peyster and Walters, second and third judges respectively. De Peyster had been one of Leisler's captains, and the resentment of both of the puisne judges toward Bayard for his activity in instigating prosecution of Leisler and subsequent execution was well known. Bayard was tried and convicted of treason under an act of 1691, of which he himself and the Anti-Leislerians were the authors, which made it treason for a person to endeavor by force of arms *or otherwise* to disturb the peace, good, and quiet of the King's government; and



STATUE OF JACOB LEISLER, NEW ROCHELLE





Parliament. Moreover, the Earl of Bellomont, when he became Governor, made it one of his early duties to see that the bodies of the two men "so barbarously murdered" were exhumed and reinterred in consecrated ground. "With public solemnities, in the Dutch Church," the bodies of Leisler and Milborne were reburied, "and their hatchments hung upon its walls."<sup>6</sup>

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Bayard's promotion of the addresses to the House of Commons, which then had nothing to do with the government of New York, more than with the government of France or Canada, was held to come within the terms of this act. A full and presumably fair contemporary report of the trial, with the arguments of William Nicoll and James Emott, both able and fearless lawyers, who appeared for the accused, have come down to us. A general verdict of Guilty having been returned by the jury, and a motion in arrest of judgment having been denied, the horrible sentence of the English law for the crime of treason was pronounced, which as those familiar with our history will remember, was subsequently annulled by Queen Anne. This celebrated trial is noticeable as showing that at this early day, a century or more before the privilege was accorded in England, a prisoner, on a trial for felony (*sic*) was allowed the assistance of counsel. It ought to be added that the Court's conduct of the trial there was not such a scandalous departure from the models then furnished at Westminster Hall as has been alleged. No sympathy need be spent on Nicholas Bayard, the leader of a bloodthirsty faction, who was only rescued from the pit he himself had dug by the timidity or charity of his prosecutors. His conviction was had, no doubt, through a strained construction of the latter of an obsolete law, but the report of the proceedings on the trial does not disclose on the part of the court any such gross violation of the ordinary rules of criminal procedure or perversion of criminal justice, as then understood, as to call for the severe judgment which some of our historians have ventured to pronounce.—Redfield's "English Colonial Polity and Judicial Administration, 1664-1776," "History of the Bench and Bar of New York" (1897).

6. Jacob Leisler, born in Frankfort-on-the-Main, Germany, about 1640, came to New York when about twenty years old, as a soldier of the Dutch West India Company's service. He soon became a trader, however, and for some time lived in Albany, where, it seems he held magisterial office. In 1678, while on a voyage to Europe, he was captured by Moors, these pirates holding him for heavy ransom. His New York home was "in the first brick house built in that city." He was successful as a merchant, and was much respected in the capital. In 1683 he was appointed a commissioner of the Court of Admiralty, but does not come further into the public records until 1689, when the events began with which this chapter deals. In 1698 the Earl of Bellomont, as Governor, caused an indemnity to be voted to the heirs of Leisler for the loss of his estates.



















